SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1034

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Petitioners,

vs.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS, and ELLSWORTH E. LORY,

Respondents.

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UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Plaintiffs,

vs.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS, and ELLSWORTH E. LORY,

Defendants.

Civil No. 7-1810-C(1)

Following is a list of Docket Entries in the District Court:

1966.

Mch. 14 Filed Complaint.

" 15 Issued Summons and delivered to U. S. Marshal.

" 30 Filed Application of defendants for extension of time to plead.

"	31	Filed Order granting defendants to May 1, 1966 to respond. Stephenson, J. Copies mailed to attorneys.
Apr.	12	Filed Summons with Marshal's return on Gerald Jackson, personally, 3/17/66; on Charles Rowley, personally on 3/16/66; Donald Blackman, personally, on 3/16/66; Velma Cross, personally 3/16/66; Chester Pratt, personally on 3/16/66; Leo Willadsen, personally, 3/16/66; Richard Moberly, on 3/16/66; (personally); Vera Tarman, personally 3/16/66; Donald Wetter, personally, 3/16/66; Ellsworth E. Lory, personally, 3/16/66; Dwight Davis, personally, 3/16/66; Raymond Peterson, personally, 3/16/66; Elmer Betz, personally, 3/16/66; Gerald Jackson, endeavored to serve, 3/16/66; Melvin Bowen, personally 3/16/66; Ora E. Niffenegger, personally 3/16/66; (school board member) Arthur Davis, School Board Member personally 3/16/66; L. Robert Keck (school board member) personally 3/16/66; John R. Haydon (school board member) endeavored to serve 3/16/66; Merle F. Schlampp (school board member) personally 3/18/66; George Caudill (school board member) personally 3/18/66; Mrs. Mary Grefe (school board member) personally 3/21/66; John R. Haydon (school board member) personally 4/1/66; Marshal's fees $68.64.
"	29	Filed Answer.
May	24	Filed Order for Pretrial Conference 5/31/66, 11:00 A.M. Stephenson, J. Copies mailed to attorneys.
"	31	Filed Order on Pretrial Conference. Defendant must file list of witnesses by 7/1/66. Case is set for trial 7/25/66 at 9:30 A.M. Anticipated length of trial is one day, not to exceed two days. Trial briefs will be filed by 7/21/66. Parties are given 10 days to file objections to matters herein ordered. Stephenson, J. Copies to counsel.

"	31	Filed Pretrial Stipulation.
"	31	Filed list of plaintiffs' witnesses.
June	27	Filed defendants' list of witnesses.
July	15	Filed defendants' motion for continuance and affidavit of defendant, Ora E. Niffenegger.
"	18	Filed plaintiffs' resistance to defendants' motion for continuance.
"	21	Filed defendants' trial brief.
"	21	Filed Deposition of Mary Beth Tinker taken on behalf of defendants. (loose in file)
"	21	Filed Deposition of John Frederick Tinker, on behalf of defendants. (loose in file)
"	22	Filed trial brief of plaintiffs.
"	22	Filed Deposition of Leonard Edward Tinker, Jr., taken on behalf of defendants. (loose in file)
"	22	Filed Deposition of Christopher Paul Eckhardt, taken by defendants.
"	25	Filed Clerk's Court Minutes re: trial to court. 1st day. entered: Opening Statements waived by both parties; evidence for plaintiffs proceeded with and concluded at 3:25 P.M.; evidence for defendants proceeded with and concluded at 3:40 P.M.; oral arguments at 9:30 A.M. 7/26/66. Stephenson, J. (23 OJ 191).
"	26	Filed Clerk's Court Minutes with list of witnesses and exhibits attached re: trial to court 2nd. day; entered: Oral arguments by counsel proceeded with and concluded; Court considers cause under submission. Stephenson, J. (23 OJ 196)

" 26 Filed defendants' exhibits numbered 1, 2, 3, 4, 5, 6, 7 & 8.

" 28 Filed Melvin Durgin's reporter's notes on trial proceedings. (loose in back room)

Sept. 1 Filed Memorandum Opinion. Plaintiffs' request for injunction and nominal damages are denied. Judgment will enter accordingly. Stephenson, J. (23 OJ 272). Copies mailed to attorneys.

" 1 Filed Judgment. Entered: It is Ordered and Adjudged that plaintiffs' complaint is dismissed at plaintiffs' costs. Stephenson, J. (23 OJ 273) Copies mailed to attorneys.

Sept. 28 Filed Plaintiffs' Notice of Appeal. Des Moines, Iowa, September 28, 1966. I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Messrs. Allan A. Herrick, Herschel G. Langdon, Richard G. Langdon and Philip C. Lovrien, of Herrick, Langdon, Sandblom & Belin, 300 Home Federal Building, Des Moines, Iowa, attorneys for defendants, this 28th day of September, 1966. F. E. Van Alstine, Clerk U. S. District Court, by /s/ Esther Lyons, Deputy Clerk.

Oct. 14 Filed Transcript of Trial Proceedings.

" 17 Filed Motion to Withdraw File by Plaintiffs.

" 17 Filed Order. Plaintiffs' Attorney is authorized to withdraw for period not to exceed 24 hours official file of this matter from office of Clerk for purpose of copying briefs therein. Stephenson, J. (Copy to Attys.) (file returned)

Oct. 28 Mailed certified copy of Notice of Appeal and certified copy of Relevant Docket Entries to Robert C. Tucker, Clerk, U. S. Court of Appeals, St. Louis, Missouri; also mailed copy of Relevant Docket Entries to Dan Johnston, of Jesse, LeTourneau, Johnston & Swanson, 1103 Savings &

Loan Bldg., Des Moines, Iowa, Attorneys for Plaintiffs, and to Messrs. Allan A. Herrick, Herschel G. Langdon, Richard C. Langdon and Philip C. Lovrien, of Herrick, Langdon, Sandblom & Belin, 300 Home Federal Building, Des Moines, Iowa, Attorneys for Defendants.

Nov. 2 Filed Bond for Costs on Appeal—State Surety Company, Surety—$250.00.

" 2 Filed Plaintiffs' Designation of Record on Appeal.

" 4 Filed Certificate of Mailing of Designation of Record on Appeal and of Statement of Points Relied Upon for Appeal by plaintiffs' attorneys.

" 4 Filed Plaintiffs' Statement of Points Relied Upon for Appeal.

On May 14, 1966, the following Complaint was filed in the United States District Court for the Southern District of Iowa, Central Division:

Plaintiffs invoke jurisdiction granted this Court in Title 42, United States Code, Section 1983.

I.

In support of their Complaint and Prayer for a permanent injunction, Plaintiffs state to the Court:

1. During all times mentioned herein each plaintiff was, and is now, a citizen of the United States, residing in Des Moines, Polk County, Iowa.

2. Plaintiffs John F. Tinker and Mary Beth Tinker are minors suing by their father and next friend, Leonard Tinker; Plaintiff Christopher P. Eckhardt is a minor suing by his father and next friend, William Eckhardt.

3. Now, and at all times mentioned in this Complaint:

(a) The defendant Des Moines Independent Community School District, hereafter referred to as Defendant District, is duly organized pursuant to Chapter 274, Code of Iowa, 1962.

(b) The defendant Board of Directors of the Des Moines Independent Community School District, hereafter referred to as Defendant Board, is the board of directors of Defendant District organized pursuant to Chapters 274 and 279, Code of Iowa, 1962, with all the powers and duties delegated to such boards therein.

(c) The defendant Ora E. Niffenegger, Mrs. Mary Grefe, Arthur Davis, L. Robert Keck, George Caudill, John R. Hayden, and Merle F. Schlampp are duly elected, qualified, and acting directors of the Defendant District, acting in the course of their statutory duties as directors as provided by the laws of Iowa, and are sued individually, and as directors.

(d) The defendant Dwight Davis is the duly appointed, qualified, and acting superintendent of Defendant District, acting in the course of his duties as superintendent, pursuant to orders and directives of Defendant Board, and is sued individually and as superintendent.

(e) The defendant Raymond Peterson is the duly appointed, qualified, and acting Director of Secondary Educa-

tion of Defendant District, acting in the course of his duties as such pursuant to orders and directives of Defendant Board and Defendant Superintendent, and is sued individually and as Director of Secondary Education.

(f) The defendants Charles Rowley, Elmer Betz, Gerald Jackson, Melvin Bowen, Donald Wetter and Chester Pratt are duly appointed, qualified and acting principals of schools in Defendant District, acting in the course of their duties as principals pursuant to orders and directives of Defendant Board and Defendant Superintendent, and are sued individually and as principals of Defendant District.

(g) The defendants Richard Moberly, Vera Tarman, Leo Willadsen, Donald Blackman, Velma Cross, and Ellsworth E. Lory, are duly appointed, qualified and acting teachers, counsellors, or assistant administrators, and employees and agents of Defendant District, acting in the course of their duties as such pursuant to orders and directives of Defendant Board, Defendant Superintendent, and/or Defendant Principals, and are sued individually and in their aforesaid official capacities in Defendant District.

4. Now and at all times mentioned in this Complaint, plaintiffs John Tinker, Christopher Eckhardt, and Mary Beth Tinker are duly enrolled and qualified scholars, pupils, and students in the Defendant District.

5. On or about December 11, 1965, the plaintiffs John Tinker, Christopher Eckhardt, and Mary Beth Tinker decided to wear bands of black cloth on their arms to express the following points of view:

(a) That said plaintiffs mourn the fatal casualties of all combatants, and others, in the warfare then and now existing in South-east Asia commonly called "The Viet Nam War".

(b) That said plaintiffs supported the proposal of United States Senator Robert F. Kennedy that a cessation of warfare or truce proposed for Christmas Day, 1965, be extended indefinitely.

6. On or about December 14, 1965, defendants Betz, Jackson, Bowen, Rowley, and Wetter, principals, met with defendant Peterson, and decided that scholars who wore arm bands in facilities of defendant district would be told by officials and employees of defendant district to remove the arm bands and, failing or refusing to remove same, be suspended as scholars in defendant district by authority conferred by Section 282.4, Code of Iowa, 1962.

7. On or about December 15, 1965, the decision alleged in paragraph six (6) of this Complaint was made known by a general announcement to scholars, officials, and teachers of Defendant District, and to all minor plaintiffs, and defendants herein, by Defendant District.

8. On or about December 15, 1965, defendant Richard Moberly, teacher, announced to his classes that no scholar could attend his classes wearing an arm band.

9. On or about December 16, 1965, while wearing a black arm band in accordance with the decision alleged in paragraph five (5) of this Complaint, plaintiff Mary Beth Tinker attended Warren Harding Junior High School, a school in Defendant District, where said plaintiff was enrolled. She wore the band throughout the forenoon hours, lunch, and the first half hour of class after lunch without incident. Plaintiff entered her second class after lunch, taught by defendant Moberly, and found on her desk a card ordering plaintiff to report to the office of the principal of said school. Defendant Leo Willadsen, vice principal, acting under the direction and authority of defendant Chester Pratt, principal, ordered plaintiff to remove

her arm band. Plaintiff immediately obeyed this order and returned to her class. Defendant Vera Tarman then appeared in the class plaintiff was attending and "suspended" plaintiff from school, directing plaintiff to return next day with her parents. Plaintiff Mary Beth Tinker remained out of school until January 4, 1966, and continued during that time to express her aforementioned beliefs by wearing a black arm band.

10. On or about December 16, 1965, plaintiff Christopher Eckhardt, while wearing a black arm band in accordance with the decision alleged in paragraph five (5) attended Roosevelt High School, a school in defendant district, where he was a student. Knowing of the policy alleged in paragraph six (6), said plaintiff went immediately to the office of defendant Charles Rowley, principal. Defendant Donald Blackman, vice principal, and defendant Velma Cross asked plaintiff to remove his arm band. Defendant Cross told plaintiff wearing the arm band would prevent his entering college.

Defendant Blackman then ordered plaintiff to leave school, and informed plaintiff his parents would receive a suspension notice by mail. Defendant further stated that plaintiff's parents would have to contact defendant Blackman before plaintiff could re-enter school. Plaintiff left school and did not re-enter until January 4, 1966, continuing throughout this period of time to wear the arm band for the aforestated reasons.

11. On or about December 17, 1965, plaintiff John Tinker, while wearing a black arm band in accordance with the decision alleged in paragraph five (5), attended North High School, a school in Defendant District in which said plaintiff was enrolled. Plaintiff wore the arm band throughout the forenoon hours and lunch without incident.

In the first class room hour after lunch, defendant Ellsworth E. Lory, teacher, told plaintiff to go to the office of defendant Donald Wetter, principal of North High School. Defendant Wetter told plaintiff to take off the arm band and, plaintiff refusing, to leave school. Defendant told plaintiff he would be allowed to return to school if plaintiff removed the arm band or the policy alleged in paragraph six (6) was revoked. Plaintiff remained out of school until January 4, 1966, continuing throughout this period of time to wear the arm band for the aforestated reasons.

12. In wearing arm bands as alleged in paragraphs nine (9), ten (10), and eleven (11), plaintiffs Mary Beth Tinker, Christopher Eckhardt, and John Tinker were lawfully and peacefully engaged in the exercise of the right of free speech secured for them by Amendments One and Fourteen of the United States Constitution.

13. The aforesaid acts of defendants, and each of them, then and now, deprive defendants, and each of them, of their right to free speech and said acts are, therefore, in violation of Amendments One and Fourteen of the Constitution of the United States and Title 42 United States Code Section 1983.

14. The deprivations of plaintiffs' rights as alleged were and are committed by defendants, and each of them, under color of statutes, ordinances, regulations, customs, or usages of the state of Iowa.

15. Unless restrained, defendants will continue to deprive plaintiffs of their constitutional rights as alleged in this Complaint causing plaintiffs irreparable harm for which they have no adequate remedy at law, and further, to attempt to redress the aforesaid deprivations of constitutional rights by separate actions at law would cause a

multiplicity of vexatious, expensive, annoying litigation which the injunction here sought will avoid.

WHEREFORE, plaintiffs pray for a permanent injunction restraining defendants, and each of them, from suspending plaintiffs Mary Beth Tinker, Christopher Eckhardt, and John Tinker, from Defendant District, or otherwise disciplining said defendants so as to deprive them of their rights to free speech as secured for them by the United States Constitution; further restraining defendants, and each of them, from in any manner using their authority under the laws of Iowa to interfere with plaintiffs in the exercise of their right to free speech; and for such further relief as the Court deems equitable, and that costs of this action be charged to defendants.

II

In support of their Complaint and Prayer for nominal damages, Plaintiffs state:

1. Paragraphs one (1) through fourteen (14), inclusive, of Division I of this Complaint are incorporated herein and realleged.

2. As a direct and proximate result of the aforesaid conduct of defendants, and each of them, plaintiffs suffered mental anguish, loss of educational benefits, embarrassment, and loss of constitutional rights, the value of which is impossible to ascertain.

WHEREFORE, plaintiffs demand judgment from defendants in the nominal sum of one dollar ($1.00) and that costs of this action be charged to defendants.

On April 29, 1966, the following Answer was filed:

FIRST DEFENSE

1. The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

1. Defendants admit the allegations of paragraphs 1 and 2 of plaintiffs' complaint.

2. Defendants specifically deny each allegation of paragraph 3 and subparagraphs (a) to (g), inclusive, thereof, except they admit subparagraphs (a) and (b) of paragraph 3, and admit that the respective defendants are the directors and officers or employees respectively of Des Moines Independent Community School District.

3. Defendants admit the allegations of paragraph 4 of plaintiffs' complaint.

4. Defendants specifically deny the allegations of paragraph 5 and subparagraphs (a) and (b) thereof.

5. Defendants specifically deny the allegations of paragraphs 6, 7, and 8 of plaintiffs' complaint, except they do admit that there was an announcement that black arm bands not be worn by students while attending classes.

6. Defendants specifically deny the allegations of paragraph 9 of plaintiffs' complaint, except they admit that the plaintiff Mary Beth Tinker attended Warren Harding Junior High School wearing a black arm band and was directed to report to the office of the principal, and state that for most of the time following December 16, 1965, to January 4, 1966, it was Christmas vacation and no school was held in any of the Des Moines school buildings.

7. Defendants specifically deny the allegations of paragraph 10 of plaintiffs' complaint, except they admit the plaintiff Christopher Eckhardt did wear a black arm band

while attending Roosevelt High School where he was a student, and that he was asked to remove the arm band and refused to do so, and was advised that he was suspended from school.

8. Defendants specifically deny the allegations of paragraph 11 of plaintiffs' complaint, except they admit that the plaintiff John Tinker did wear a black arm band while attending classes at North High School and was advised to go to the office of the principal and was requested to take off the arm band, which he refused to do, and that he was advised that he would be allowed to return to school if he removed the arm band, and that most of the time while he remained out of school was Christmas vacation.

9. Defendants specifically deny each of the allegations of paragraphs 12, 13, 14 and 15 of plaintiffs' complaint, and allege the fact to be that the wearing of said arm bands was done in direct violations of the reasonable rules for the regulation of conduct of students at the various schools involved, and to permit continued violation of said rules and regulations threatened a breakdown in the discipline and orderly conduct of classes in said respective schools. That whatever was done by any of the defendants was done in an effort to properly regulate the conduct and maintain order in the respective schools.

WHEREFORE, defendants pray that the plaintiffs' complaint be dismissed at plaintiffs' cost.

On May 31, 1966, the following Pre-Trial Stipulation was filed:

The parties to the above entitled action, by their attorneys, Jesse, LeTourneau, Johnston & Swanson for plain-

tiffs, and Herrick, Langdon, Sandblom, and Belin for defendants, make the following Pre-Trial Stipulation pursuant to the order of the Court entered May 24, 1966.

I

This action was commenced alleging jurisdiction conferred by 42 USCA 1983, plaintiffs contending they were suspended from defendant school district for participating in conduct privileged by Amendment Fourteen on the U. S. Constitution, to wit: wearing black cloth arm bands to express a political idea. Plaintiffs seek an order restraining defendants from disciplining them so as to deprive them of their rights to free speech: and seeking nominal damages.

II

The following facts are hereby stipulated as true and undisputed in this action.

a. Prior to December 16, 1965, defendant Peterson and defendants Rowley, Betz, Jackson, Bowen, and Wetter met in their capacities as officials of defendant district and decided that students of defendant district would be prohibited from wearing black arm bands while in school.

b. Prior to December 16, 1965, the aforestated prohibition was announced to students and employees of defendant district.

c. On December 16, 1965, plaintiffs Christopher Eckhardt and Mary Beth Tinker wore black arm bands while attending schools in defendant district and were told to leave school until such time as they removed the arm bands.

On July 25, 1966, evidence was taken in the matter as follows:

PLAINTIFFS' CASE

JOHN FREDERICK TINKER, Plaintiff, testified as follows:

Direct Examination by Mr. Johnston.

My name is John Frederick Tinker, 704 Grandview; 15 years old. My parents are Leonard Edward Tinker and Mary Jean Tinker. My father is Peace Education Secretary for the American Friends Service Committee. He is a Methodist Minister, officially assigned by the Bishop to the American Friends Service Committee. I am in the 11th grade, at North High School in Des Moines, Iowa.

During the month of December, 1965, I decided to participate with several other people in a witness or demonstration of views that I have by wearing a black arm band over the holiday season. On Wednesday evening, December 15, I received a phone call from Ross Peterson, or Bruce Clark, I am not sure which one. Bruce and Ross were both members of the Liberal Religious Youth Organization at the Unitarian Church. They told me that some people had met and decided that they were going to wear arm bands during the holiday season to mourn the dead in Viet Nam and to hope for a Christmas truce that might be extended into an open ended truce. Wednesday evening they came over to my house and gave me copies of a document entitled "We Mourn" which I read and agreed with. They talked with mother and father and my sister Mary Beth and I decided to wear an arm band.

The idea of an indefinite truce was originally Robert Kennedy's and I hoped that such a truce would stop the killing and might lead to a peaceful settlement in the war. In addition to the wearing of the arm bands there was going to be a fast on New Years Eve and one other day and I did fast during those days. Also, there was a worship serv-

ice at the Unitarian Church on New Years Eve, but I am not sure if that was directly tied with the arm band demonstration.

I have been in several demonstrations against the war and several Civil Rights demonstrations. The subject of peace and the subject of the war in Viet Nam and the political and moral implications of it are discussed quite often in my home. These are concerns which I share with my parents and most of my brothers and sisters although I do not subscribe to all of the views of my parents.

I attend a Friends meeting and have been so attending for four years. The subjects of the conduct of war in Viet Nam and the roll of warfare and international relations and international policy are discussed at the Friends meeting quite frequently.

I had not attended any meetings concerning the wearing of arm bands prior to the one I discussed earlier on Wednesday night, but I attended most of the meetings concerning this after Wednesday.

Most of the others wore arm bands on Thursday December 16, 1965, I didn't feel that I should just wear it against the will of the principals of the high schools without even trying to talk to them first. I believe I first learned they were opposed to wearing the arm bands on Wednesday night and so I didn't wear one on Thursday because I hoped we could try to talk to the school board. Thursday evening we had a meeting with the students who had worn them Thursday and other people who were interested and the President of the school board, Mr. Niffenegger, was called, to ask him if we could meet with the school board and talk to them about the arm bands. He said no not before the next regularly scheduled meeting of the school board. I first wore an arm band on Friday, December 17. That was a school day and I wore the arm band to school.

The first thing in the morning we had orchestra practice and I was almost late for that and was on a tight schedule, so I didn't have time to put my arm band on for that period. Nor did I have time to put it on when I went to home room, after orchestra. I put the arm band on after home room. I arrived at school around 7:30 A. M. and put the arm band on about 8:30 A. M.

The arm band was a strip of black cloth about 2 inches wide. I wore it on the left sleeve of my jacket the first part of the day and then on my shirt the second part of the day.

The instructor in the first class I wore the arm band was Mr. Thompson. I'm not sure Mr. Thompson saw me wearing the arm band. He made no comment about it. In his class we engage in group work and we were working out some sort of play and Mr. Thompson was out of the room much of the time.

I felt self-conscious about wearing the arm band. We students were talking about the play we were going to put on and some of the other students talked to me about the arm band and asked me why I was wearing it. I told them why and some of them didn't think I should do this, but they thought I should have the right to if I wanted to. This discussion took place on and off during the class period. There was no other activity about the arm band during this first class.

The next class I went to was algebra class. I got there about 10:30 and the professor was Mr. Worden. I don't believe he saw the arm band either; he made no comment about it and there was no discussion in his class at all about the arm band.

"I sit in the back of the class and I don't think anybody saw it. On my way to algebra class I don't remember

but I am sure probably—somebody probably said something about it." I was on time for my algebra class. The next class I attended was gym during the third hour period. I wore the arm band on the way to gym class and there was no discussion of that on the way to class. There was hardly no one around. I wouldn't say for sure whether there was any discussion about it in the halls on the way to the class or not. I did not wear the arm band when I had my gym clothes on, and there was no discussion of it in the gym class itself. There was some discussion before. After gym class some of the students were making fun of me for wearing it. Others, who were my friends, said they didn't want me to get in trouble. Two or three boys made remarks in the locker room that were not very friendly. This lasted for perhaps 3 or 4 minutes. They did not threaten me with any physical harm.

After gym class I had half an hour for lunch. I ate lunch in the student center with several other students with whom I eat frequently. These people warned me in a friendly manner to take the arm band off. There was one student with whom I had had a feud in the 7th grade who was making smart remarks for about 10 minutes. There were 4 or 5 people with him standing milling around. There were quite a few other students standing and milling around the lunch room. To my knowledge there were no threats to hit me or anything like that. At no time was I in fear that they might attack me or hit me in the student center because there were too many people there. I believe there were faculty members or school staff members there most of the time. No faculty member or staff member entered into any of this activity concerning the arm band in any way. A football player named Joe Thompson told the kids to leave me alone; that everybody had their own opinions.

After lunch I went to 4th period which is English with Mr. Lory. I still had the arm band on and when I arrived at the class Mr. Lory said "they are waiting for you at the office." I went down to the office; it was Mr. Wetter's office. Before arriving there I made a phone call to my home. I think it was my father who answered. My parents had told me if anything went wrong or I got in trouble to call. They knew that I would be wearing the arm band. Mr. Wetter is principal of North. I walked into his office and he said "I suppose you know I have to ask you take it off," and I said yes I do. He said "I don't suppose you will" or something like that and I said "no" and he said "well, I guess you know you can't wear it in school". I can't remember exactly. He said it was something about a hierarchy, and that he was following orders from higher up. When I told him that I was not going to take the arm band off he told me I would have to leave school but wouldn't be suspended. He said that as soon as I took the arm band off or there was a different ruling on it that I could come back to school.

Mr. Wetter said for his own personal reasons he wanted to know why I was wearing the arm band so I told him the same thing; mourning the dead, and hoping for a Christmas truce. I guess he was in World War II and he told me about that and he made one statement that I am not sure what he meant. He said "I suppose as soon as you leave that you'll call the newspaper" and I told him that we didn't call the newspaper to begin with; that it was the school board that had made the newspapers.

My father arrived at the school and talked to Mr. Wetter for quite awhile, in my presence. We left and it was Tuesday, January 4, 1966, when I returned to school. I never received a notice of official suspension.

I had been in school in Des Moines about 8 years before this suspension and had never been suspended or been sent home before for any purpose except being sick.

I hold the same philosophies and moral beliefs now that caused me to wear the arm band and if I were to return to school this fall or tomorrow I would still desire to have the right to wear an arm band to express those views.

Cross-Examination by Mr. Lovrien.

It was Wednesday night when Ross Peterson and Bruce Clark came over to my house to discuss the situation. My parents were present. Ross and Bruce told me about the arm bands and I am not sure if there was a definite decision whether or not to wear an arm band. I can't remember for sure but to my knowledge it was the first time I had heard about the idea of wearing arm bands relative to the war in Viet Nam. I hadn't made a definite decision to wear an arm band on Wednesday evening. There had been a meeting at the Eckhardt's on a Saturday night before; I believe that would have been the 11th. I couldn't say for sure whether my mother attended that meeting or not. There could have been a discussion about it in my family before Wednesday, but I can't remember.

I used a piece of black cloth. I don't know where I got it. But I ironed it neatly. Mother must have bought it, somebody bought it, but it was probably a long time prior to that. I know she didn't go out and buy black ribbon Wednesday night or whenever it was, just for the arm bands.

Thursday morning my sister Mary Beth wore a ribbon, but I didn't, and Mary Beth got sent home from school.

Also at home in December of 1965 I had a younger sister, Hope, and my younger brother, Paul. Paul is 8 and

wore a black arm band to school Thursday morning. He is in second grade. Hope is 11 and in the 5th grade and I believe she wore an arm band on Thursday morning, too.

I suppose my mother and father have participated in most of the demonstrations against the war in Viet Nam and Civil Rights demonstrations that I have participated in.

The meeting Thursday December 16 was attended by people who had worn the arm bands on Thursday and other interested people. My sister was there, Chris Eckhardt, Chris Singer, Ross Peterson, and Bruce Clark, and others whose names I do not know. Bruce didn't wear an arm band but I am sure that Chris had worn his, and I knew on Thursday evening that he had been sent home. At the meeting we called Mr. Niffenegger and tried to talk to him. It was either Ross or Bruce one of the two who called, because they were the oldest of the group. I can't remember exactly what was said. The purpose for calling Mr. Niffenegger was that we were going to ask him if we could maybe have a discussion with him and talk to him before the school board meeting. We thought if it was brought to the school board's attention, what had happened, I really thought that they would change their decision. We recommended a meeting ahead of the regular meeting and he said no that he would not call a special meeting. He said the regular meeting would be in the next week, Tuesday, but we went on Christmas vacation Wednesday and that would have meant 3 days that we then would have been either out of school or unable to wear the arm bands.

I didn't anticipate the rule would forbid me from wearing the arm bands outside of school. I was concerned about being able to wear it to school because I didn't see anything wrong with it. I didn't think it was all that bad.

In fact, I thought it was kind of good. That's why I was going to wear it. I wanted to wear it as many days in school as I could.

"Q. And so in spite of the fact that you knew that the rule was in effect, you wore it Friday morning." "A. Let me try to explain it. I did not wear it Thursday morning because I—we were still trying to get ahold of Mr. Niffenegger and we were trying to discuss it with him, and he said he wouldn't. Now, I don't know if I can do this or not, but I read the paper Friday morning, and—I don't know—could have been hearsay, but it stated—well it said that Mr. Niffenegger said that there would—there was something to the effect that there wouldn't be any meeting and I believe the word 'trivial' was mentioned in it. I'm not sure about that, but somewhere along the line he gave that indication, I know that. And I thought that—you know—he could at least listen to us and hear what we were going to try to say. And when it came out that he wouldn't even listen to us—I don't know—I guess I decided to wear it."

Thursday night meeting was at the Eckhardts'. I don't know how I found out about the meeting. I assume Chris Eckhardt's parents were at the meeting but they didn't participate in it. The Eckhardts live 7½ miles from where I live. I assume my father or mother took me there.

When I wore the arm band to school my friends made complimentary remarks and those who weren't my friends made uncomplimentary remarks. I suppose I was attracting some attention by wearing the arm band. I wanted students and everybody else that saw it to know I was wearing it, and I welcomed questions at school while I was wearing it.

My parents and I are generally against the policy of the government in Viet Nam. By wearing the arm band I

suppose I would have hoped to have influenced public opinion about the matter of Viet Nam and to call attention to it; to influence people to believe as I did about it.

On that day, as I ate lunch, the students made uncomplimentary remarks to me. Some referred to me as a "commie" and other things of that nature. Then this one boy quieted everything down and told everybody to lay off me. After lunch I went immediately to English class after I went to my locker to get my books. The teacher was Mr. Lory. I came into the room and he told me to go down to the administrative offices and when I got to the office there was a phone there and I asked the lady in the office if I could use the phone, and I did. Eventually I started talking with Mr. Wetter and in the course of the conversation Mr. Wetter put in a call to my parents. And I would assume that at about the time he was calling my father came in.

Re-Direct Examination by Mr. Johnston.

I do not consider this a trivial matter, it is important to me because I morally think it is wrong, and when people are getting killed. I guess that's important to me.

I spend from 8:00 o'clock till 3:30 p.m. 5 days a week in school about 6½ hours a day. Most of the people I associate with are my school friends.

These views were not imposed upon me by my parents or the Eckhardts; it was my own view. I like to think that I thought it out myself. At first my father opposed my wearing the arm band, but my mother didn't. I can't remember the exact reasons why my father opposed it, but I suppose it was because he felt that it would be defying the Board, and he didn't think I ought to do that.

Students regularly talk to each other at the lunch room and the student center. They have arguments there on

other occasions, and on this occasion no faculty member had to intervene.

Re-Direct Re-Cross-Examination by Mr. Lovrein.

I know there was somebody from the office in the lunchroom. I believe it was a clerk or someone; there was an adult. I couldn't say for sure whether he was within hearing or aware of anything that was being said or exchanged between me and other students.

MARY ELIZABETH TINKER, plaintiff called as a witness testified under oath as follows:

Direct Examination by Mr. Johnston.

I am Mary Elizabeth Tinker, 704 Grandview. I am also known as Mary Beth Tinker. I am 13 years old. My parents are Leonard Edward Tinker and Mary Jean Tinker. John Tinker, who testified earlier is my brother.

I go to school at Warren Harding Junior High School. I have gone to school in Des Moines since kindergarten.

I decided to participate in a "witness" or "demonstration" by wearing a black arm band, beginning Thursday December 16 until New Years, fasting one day and Christmas Eve; and attending New Years Eve service at the Unitarian Church. The purpose was to mourn the dead in Viet Nam and to urge for a Christmas truce which hopefully would be open ended; to last and keep going on until there would be a settlement to end the war. I was hoping President Johnson would have a settlement with North Viet Nam and a truce. On Wednesday, December 15, Bruce Clark and Ross Peterson came to my house and they were talking to mom and dad and John and I about it. I decided to wear an arm band Thursday morning to school, December 16. This decision was my own, neither mother nor father attempted to convince me or said anything to me that I should wear one.

This is not the first time that I have ever engaged in a witness or demonstration of my ideas about peace and war. There have been demonstrations off and on about protesting the Viet Nam War and also about Civil Rights that I have been in; by Civil Rights I mean racial affairs.

I attend Des Moines Valley Friends meetings and these subjects are discussed there and I participate in the discussions. I started thinking seriously about political implications of war and peace when I was in about the 4th, 5th or 6th grade. These subjects are discussed at home and I participate in discussions about them with my brother and older sister and my parents, mostly.

I wore a black arm band Thursday December 16. I used some ribbon that we had around home. I got it myself and cut it. I wore the arm band when I went to school arriving about 8:00 o'clock a.m.

We had chorus and I remember going there and I am pretty sure that I had the arm band on when I went to chorus. It was just a strip of black cloth about 1 inch wide and it was pinned on my left arm with a safety pin. No one at chorus when I first arrived discussed the arm band nor was there any discussion during the first period. Then I went to home room and I do not remember anyone making any mention of it on the way to home room. In home room I sit right by the teacher's desk and she made no mention of the arm band. Nor did she make any sign that she saw the arm band. Nor did any other students show that they recognized it or mention it.

Then I went to science class taught by a Mr. Vigharoli, I don't think anyone mentioned the arm band to me on the way to that class. Nor did the teacher. The girl I sit next to in science asked me about it and I told her what I was wearing it for. That was about all the discussion

of it in that class. She also signed a petition that I had and I think maybe one other girl talked to me about it and signed it. The petition said that we should have the right to wear any arm band or crucifixes or anything like that. I had the petition signed before science class began.

After science I went to homemaking class. No one talked to me about the arm band on the way to class. Mrs. Bell, teacher of homemaking class, pointed to the arm band and that was about all she did. The students noticed it, I could see them looking at it and I think a couple of kids that sat at my table asked about it. Everyone talks in homemaking class while we are sewing. The girls at my table told me I had better take it off or I would get in a lot of trouble. They were not threatening me, they were just trying to keep me out of trouble. They were my friends and I told them I was going to go ahead and wear it.

Then I went to history class and there was no discussion about the arm band on the way to that class. If Mrs. Dickinson, the professor of the history class, noticed, she didn't say anything. The boy that sits behind me told me that I had better not wear it because I would get into trouble. Then I went to English class, the teacher is Mrs. Corey. The students told me that I had better take the arm band off while I was in the hall on the way to class. There was no disruption caused by this. My English teacher made no mention of the arm band nor did any of the others in English class, which was right before lunch.

I wore the arm band to lunch in the cafeteria and a couple of girls sitting at my table told me I had better take it off or some of the teachers would start getting me in trouble. A table of boys that sat behind us made some smart remarks. They were just teasing. They always do that to us, about anything. It is common for students to talk between tables at the cafeteria.

After lunch I went back to the second half of English with Mrs. Corey, and I don't think there was any discussion or activity about the arm band.

Next I went to math class, taught by Mr. Moberly. The day before, in this class, we had spent the whole day talking about student protests. Mr. Moberly said that he didn't like student protests because the students didn't have anything better to offer and he said that if anyone demonstrated in his class they would get kicked out. I asked him if wearing a black arm band would be considered a demonstration by him and he said yes. On Thursday I wore the black arm band to Mr. Moberly's class, I walked in and sat down in the back of the room. He stands in the back by the door until the bell rings. As he walked by my desk after the bell rang, he laid a pass to go to the office on my desk. I picked up my books and went to Mrs. Tarmann's office. She wasn't in so, I sat down and I waited for her about 10 minutes before Mr. Wiladsen, the boy's advisor in and asked me why I was in the office. I told him I wasn't sure but I thought it was because I was wearing a black arm band. He told me that all that was left to do was to take it off, and so I took it off, and then he gave me a pass to go back to math.

I went back to math and I had been there about 5 or 10 minutes and Mrs. Tarmann came in and she told Mr. Moberly that Mary Beth Tinker was wanted at the office. At this time I did not have the black arm band on because Mr. Wiladsen had it. I went to the office and saw Mrs. Tarmann. She told me she was sorry she had to do it, because she understood my point of view because her grandparents had been Quakers or something like that, and then she told me she would have to suspend me. She said that she had to follow orders, but she sympathized with my opinion. She gave me a suspension notice that

says you have been suspended and it goes home to your parents and they have to sign it and bring it back before you can get back in school.

I had never been suspended before.

I still hold the same views about Viet Nam.

I returned to school the day after Christmas vacation, January 3th. There was one day of school after vacation before I returned. I did not wear an arm band when I went back to school. If school began tomorrow, I would still want to have the right to wear an arm band for the same reasons that I wore it before.

Cross-Examination by Mr. Lovrein.

Before the meeting Wednesday I think mom and dad had been talking about some college students wearing black arm bands at home. On the same day I wore an arm band my brother Paul and sister Hope did also. Hope was 11 and in 5th grade, Paul was 8 and in Second grade. My parents did not explain to them the reason for wearing the black arm bands; they understood perfectly well. I don't remember who put the arm band on the little ones. Whoever they asked to. The ribbon was just around.

I remember testifying on a deposition a week or two ago and I recall that I said that mother went to the store and bought the ribbon after we decided that we wanted to wear a black arm band. But as I remember now, I don't think she bought it. I think we already had it.

When I wore the arm band to school, I wore it over a black sweater.

The principal's decision, to have a ban on arm bands prompted the discussion in math class on Wednesday. It was a general discussion among the pupils and Mr. Moberly.

Not many students talked. I asked Mr. Moberly a few questions. I asked him if he considered wearing a black arm band a demonstration and he said yes.

The next day I wore an arm band.

I was 13 years old last December. My birthdate is September 8th. I was in the 8th grade then and will be in the 9th grade this fall.

Re-Direct Examination by Mr. Johnston.

I did not wear the black sweater to try to make the arm band invisible, and it was possible to see the arm band over the sweater. The whole period of mathematics on Wednesday, December 15th was taken up by this discussion of students and demonstrations. I think it was started by Mr. Moberly. He did not attempt to stop it in any way or to change the subject to mathematics. He participated actively in this discussion; he did most of the talking. I was the only student who disagreed with positions that he took. I diasgreed both by making statements and by asking questions. Mr. Moberly talked about student protests and said that they just protested to be doing something. I don't think that he specified any particular protests.

CHRISTOPHER PAUL ECKHARDT, plaintiff testified under oath as follows:

Direct Examination by Mr. Johnston.

I am Christopher Paul Eckhardt, 3819 Lanewood Drive, 16 years old. My parents are Margaret and William Eckhardt. My father is a clinical psychologist and an assistant professor of psychology at the college of osteopathic medicine and surgery Des Moines, Iowa. I attend school at Theodore Roosevelt High School in Des Moines. I have

attended school in the Des Moines Independent School District since 5th grade and I will be a junior, 11th grade this fall. My grade point average is a B+ and I intend to attend college when I graduate.

About Saturday night December 11, 1965, my parents told me that some college students and interested people were going to be wearing black arm bands on December 16 until January 1, and fast on December 16 and January 1st, to mourn the dead in Viet Nam and to hope for a Christmas truce. My parents learned of this at a meeting at our house Saturday afternoon which I did not attend. It sounded to me like a nice thing to do, but I did not decide right away that I would participate.

I attend the First Unitarian Church in Des Moines. The youth group there is called Liberal Religious Youth and I attend that. Questions such as international policies and conduct of war in Viet Nam are discussed there. I have had views on peace and war since about the 8th grade and these matters are now and then discussed in our home. My parents have never attempted to dissuade me from my views. Before this demonstration I marched from Ames to Des Moines about 3 years ago in a Civil Rights demonstration. I also went to Washington, D. C. in November for an end the war in Viet Nam demonstration. Dr. Spock was involved in that demonstration. On Wednesday night I announced to my parents that I was going to wear an arm band. They had not tried to persuade me to wear one and did not attempt to dissuade me from wearing one. I first wore it Thursday, December 16, and I attended Roosevelt High School, with it on.

I arrived at the school around 8:00 o'clock and went to my locker. At this time I had an overcoat over the arm band and it would not have been visible. The arm band first became visible when I took my overcoat off at my

locker. No one made any comments about it. From my locker I started directly for the office. A student asked me why I was wearing it and asked me if I knew there was a rule against it, and I told him why I was wearing it, and I told him I knew there was a rule against it.

The Wednesday morning paper contained an article saying that the principals had met together and had decided that it would cause a disturbing influence in the schools to wear arm bands and they had prohibited it. I thought they might suspend me and that is why I went directly to the office. Bruce Clark was with me. He did not have an arm band on but wore a black suit. I asked to see Dr. Rowley, principal at Roosevelt but he was in a meeting. Mr. Blackman, vice principal, came out of his office and saw the arm band and asked me to come into his office. I waited 45 minutes in his waiting room and then he asked me into his office. By this time Bruce Clark had gone to class. Mr. Blackman took me into his office and asked me who the instructor was that asked me to take the arm band off. I told him no instructor had asked me to take the arm band off and so he asked me to take it off and I told him that I wasn't going to. I think he said he was going to have to suspend me because the principals had decided that it was against the rules to wear one.

The arm band was about 1¼ inches in width and about 8 or 9 inches long, and black on both sides. I wore it over a cocoa brown coat.

Q. In response to Mr. Blackman's statement did you remove your arm band? A. No.

Q. Did he suspend you? A. Well, we talked a while and then—

Q. What did you talk about? A. He called my mother and he told her that he was going to have to suspend me,

and he asked me to remove my arm band a couple more times because it was going to bring bad publicity to the school, and we talked a little while longer—I can't remember exactly what about—and then Mrs. Cross came in.

Q. Who is Mrs. Cross? A. Mrs. Cross is the girls' adviser.

Q. At Roosevelt High School? A. Yes.

Q. What if anything did Mrs. Cross say when she came in? A. She must have been walking by, and Mr. Blackman asked her to come in and she came in and shut the door and he told her, "We have a student here who has a black arm band, who doesn't want to remove it," and so she sat down beside me and started talking to me. She was saying this is going to look bad on my record.

Q. On whose record? A. On my record. Earlier, Mr. Blackman had told me that I had a good record with the school, and asked me if I was looking for a busted nose, and I told him I wasn't, and he said something to the effect that that is what it was going to look like on my record for being suspended from school, and Mrs. Cross informed me that the colleges didn't accept demonstrators or protestors, and they told me this and asked me to remove my arm band and I told them I was going to keep it on, and Mr. Blackman gave me a pass to go home and told me that a suspension notice would come in the paper.

Q. Come in the mail? A. Come in the mail—I'm sorry. And that it would let me know that I was going to get all fives for the classes that I missed.

Q. What's a five? A. Five is an F. Same as failing. And I believe I asked them if I took my arm band off, if I could come back tomorrow, and they said something to

the effect that a notice will come in the mail, and don't do anything until the notice comes. And so, I went out into the main office and Mrs. Cross asked me if I wanted to go in the other room and call my mother to talk this over with her and take my arm band off, but I told her I had informed my parents that I was going to wear an arm band, and so I saw Dr. Rowley, and he asked me what Mr. Blackman had done and I told him Mr. Blackman had suspended me, and then I signed out and walked home.

Q. Chris, during the time that you were in Mr. Blackman's office was there any discussion of the reason that you were wearing the arm band? A. I believe they may have asked me. I can't remember exactly if they did or not, but I think they asked me why I was wearing it, and I believe I answered them.

Q. Did either Mrs. Cross or vice-principal Blackman make any comment on what they thought of your views? A. I can't remember, but they said something like I could wear the arm band after school if I wanted, or before school.

Q. Well, now, did they make any reference to your age in relation to your views? A. I can't remember. I think he did ask me how old I was, and I told him. But I can't remember exactly what happened then.

Q. Did either of them say that they thought you were too young to have any views?

MR. HERRICK: We object to that as leading.

MR. LOVRIEN: We object to that as leading and suggestive.

THE COURT: It is leading.

Q. (By Mr. Johnston) Did they make any other comments about your views, whether or not you should have

them? A. Well, Mrs. Cross had mentioned that she thought I was too young and immature to have too many views, and thought I ought to take the arm band off, and they let me know while I was going to be out of school that I could probably have plenty of time to look for a new school to go to and I told them I liked Roosevelt and I wanted to come back, and they said that if I did anything like this again that I wouldn't come back to Roosevelt.

Q. Was there any more talk about how your wearing the arm band would affect the school's publicity? A. Well, only that I was going to—I would get—only that it was going to make the school look bad and it was going to be lots of bad publicity for the school.

Q. Now, did they say in what way it would make the school look bad? A. No, I can't remember if they did or not.

Christmas vacation began after school Wednesday December 23rd and I returned to school on January 4th. I believe I missed 6 days of school. My understanding was that I would not be able to return to school so long as I wore an arm band.

I have not changed my mind about the war in Viet Nam. I believe the United States is trying to be too aggressive at the moment and is escalating the war while we should be trying to make peace. I believe the United States talks about peace but keeps escalating the war and I feel that I would like to have the right to wear an arm band in school.

Cross-Examination by Mr. Lovrein.

I recall giving a deposition in this case on July 19th and being asked about the substance of the conversation between myself and Mr. Blackman and Mrs. Cross. Since that time I have recalled more about it.

I did not get all 5's in my classes. I came back to Roosevelt on January 4th, one day after school started after Christmas vacation. I did not fail any of my subjects and I had around a B+ average at the end of that semester. I was not penalized in any way, grade wise, by reason of the days I was out of school.

On the way down to the principals' office, I met a boy who asked about the ribbon. I don't know who it was.

When I arrived at school with the arm band on, I went right to the Administrative office after going to my locker because I knew I was breaking a rule. I didn't expect exactly to be suspended. I went to the office to tell them I was breaking a rule; that I had the arm band on, and that my intentions were to wear it over Christmas vacation. I didn't know exactly what they would do.

During the meeting at my parents' home on December 11th, I was out shoveling snow and inside for a little while but not very long. My parents were in attendance and I think there were 15 or so others there. I don't know who sponsored the meeting. At the time my mother held some office in the Women's International League for Peace and Freedom. To my knowledge this organization did not sponsor the meeting. My mother and father were there, and I'm not sure, but I think Bruce Clark and Ross Peterson both students at Roosevelt High were there.

The purpose of the trip to Washington in November, 1965, was for an End the Viet Nam War march. It was a march from the White House to the Washington monument. My mother went. We were there for a weekend. We carried banner, placards, and so forth protesting the war in Viet Nam. Those were my sentiments then and they are my sentiments now. I wore a black arm band to school as a matter of protest of the war in Viet Nam, and to hope for a Christmas truce. That was the sole reason. I hoped in

a small way to influence public opinion toward my views of the war in Viet Nam. I don't know who called the meeting in Washington that I went to. I knew that a bus load of people were going from Grinnell College and I decided that I would like to go.

On Sunday, December 12th, 1965, there was a liberal religious youth meeting at our house. I am sure Bruce Clark attended and I think Ross Peterson and John Tinker attended. There was a discussion about the arm bands and a meeting that had taken place the day before. I think just Bruce was there Sunday evening and had also been at the Saturday night meeting. We decided that each of us as individuals would do as she or he wished. But the group wasn't going to sponsor it.

I have seen Defendant's Exhibit One. Something to the effect of this was read at the Unitarian Church on Sunday, December 11 or 12th, and the students took part of it and added more at the liberal religious youth meeting. I think it was either Bruce or Ross who made the additions. I think the mimeograph copies of this were run off Monday or Tuesday at the home of Marjorie Smith. I had a couple of copies of the text of the statement expresses my purpose in wearing the arm band.

I think it was Wednesday night that I told my parents I was going to wear the arm band. I can't remember exactly when I walked from Ames to Des Moines but I think it was around 2½ years ago, before I was in High School. I think there was also a demonstration at the Hotel Ft. Des Moines about two years, or a year and a half ago. It was about Civil Rights. My parents have participated in some of the other marches. Neither of them walked from Ames to Des Moines. The placard I carried in the Washington march said something to the effect of "Follow the Geneva Accords of 1954". There were people there with

the placards. A man would stand on the corner and he would have around 50 with him and you could just take one if you liked one.

The afternoon of the day that I was dismissed from school there was a meeting at my house. Chris Singer and Ross Peterson, were there and I think John and Mary Beth Tinker might have been there. There were some other students; I can't remember exactly who. Bruce Clark was suspended for wearing an arm band on Friday.

I think either Ross Peterson or Bruce Clark called Mr. Niffenegger from my home. I believe there were two different calls made. I think they wanted to see if a special board meeting could be held because they wanted to talk with the school board because they didn't want to defy authority and they didn't want to break any rules. We would have rather have talked it over with them. But no special board meeting was being called. He told them that next Tuesday night was going to be the Board meeting and this might be on the agenda and might not.

That night there was a meeting at the Friend's House, the American Friends Service Committee. I think our parents called the meeting. They were there. John and Mary Beth Tinker were also there. Mr. Sawyer, law professor at Drake University, Chris Singer and Mrs. Hutchinson were there and Dr. Griffin and some more students from Roosevelt. Phil Keo and Bruce and Ross were there. Sandy Jones was there. Altogether around 20 were there. Chris Singer, a girl student at Roosevelt was suspended for wearing an arm band. I think they just wanted to get together to see what could be done and we had Mr. Sawyer there as a legal advisor. The other students, 3 of them, I think, decided to wear arm bands because the school board wasn't going to hold a special meeting. Those 3 were Chris Singer, Bruce Clark and John Tinker.

Re-Direct Examination by Mr. Johnston.

Just before I went for the deposition I had been on vacation. At the time these events were taking place I kept a scrap book of them. Since the deposition I have had a chance to refresh my memory by referring to my scrap book and I have an independent recollection of the events that I testified to today, refreshed by reference to my scrap book.

At the school board meeting Tuesday before Christmas vacation the Board decided to defer a decision whether or not to uphold the ban. The next school board meeting was Monday night at the end of the first day after Christmas vacation. I decided not to go back to school the first day after vacation, but rather to wait and see what decisions were made at this meeting Monday night.

Testimony of LEO E. WILLADSEN: Defendants-appellees amend the record by including in narrative form the testimony of Leo E. Willadsen, called as a witness by the plaintiffs.

Direct Examination by Mr. Johnston

My name is Leo E. Willadsen, 2520 Arthur Circle, Des Moines, Iowa. I am employed as vice-principal of Warren Harding Junior High School. I have been vice-principal nearly a year. The principal is Mr. Chester A. Pratt. I recall having an encounter with a student known to me as Mary Elizabeth Tinker in my official capacity as vice-principal on or about December 16, 1965. When I walked into the office she was seated there and I asked her why she was there and she indicated that apparently it was because she was wearing the black arm band. She indicated she had been sent to the office. I merely asked

her if she would give me her black arm band that she was wearing, she said "I suppose if you want it", and at that time she gave it to me. I told her that she could not at this point return to her class until such time as the girls' adviser would be available to talk with her. I did not talk with her any longer during that period. Later that afternoon it came to my attention that Mary Elizabeth Tinker had been suspended from school. It was in a casual sort of way. I knew that she had been sent home. There was nothing formal about it as far as I was concerned—but I did find out—did hear in a roundabout way—I don't know exactly how, that she had been sent to her home. In my capacity of vice-principal of Warren Harding these matters generally are under my supervision. I was acting in my capacity as vice-principal of Warren Harding in the acts that I engaged in.

Defendants-appellees further amend the record by including in narrative form the testimony of VERA ANN TARMANN.

Direct Examination by Mr. Johnston

My name is Vera Ann Tarmann. I live at 1017 Sixty-Fifth. I am employed by the Des Moines Independent School District in the capacity of girls' adviser at Warren Harding Junior High School. I have been girls' adviser at Warren Harding for two years. In my capacity as girls' adviser I did have occasion to meet Mary Elizabeth Tinker, a student there on or about December 16, 1965. When I was at lunch I had been informed that Mary Beth had been sent to the office to see me and that she had been returned to class. After I had completed lunch I went by Mary Beth's class and asked her that she come with me to the office. I am not sure but I think I had been told why she had been sent to the office the first

time. When I went to Mary Elizabeth's class to find her I did not notice anything unusual about her clothing. I asked Mary Beth to come to the office with me. She did that, we walked together. I had a conversation with her. It related mostly as to why she had been sent to the office, and she told me and at that time the arm band had been given to me by Mr. Willadsen. The arm band is in my right hand upper drawer in my office. I will not use the word "suspension", Mary Elizabeth was not what we would call actually suspended. In other words she was not referred to the Pupil Personnel Department. She was sent home that afternoon and I called her mother to tell her that she would be sent home until I had an opportunity to talk to her parents. I did have an opportunity to talk to them on Friday morning at my office. It was the following day after she was suspended. Mary Elizabeth did not to my knowledge return to school. I am not sure why. She could return to school any time she wanted to. She could not have returned to school and worn the arm band with my consent. If she had done so I would have asked her to do the same thing, remove the arm band or go home. We make a paper, make the form in duplicate, I guess there are five or six copies, and a copy was sent probably to the Department of Pupil Personnel. I have not done this thing before to other students for this reason, for other reasons, yes, for disciplinary reasons. Except for the fact that this was prompted by Mary Beth wearing an arm band my action was the same as it has been in other instances as girls' adviser. I was acting in my capacity as girls' adviser of Warren Harding. I knew of a regulation prohibiting Mary Beth from wearing an arm band. We knew it was an acting policy at this time. It came to my attention through the secondary principal. The policy was effected at a meeting earlier in the week. Prior to Mary Beth wearing the black arm band, I did not

know of any other student wearing a black arm band. I haven't been aware of any other political or religious symbols at Warren Harding. I am not sure whether there is any regulation against them. I don't know of any. I didn't ask Mary Beth whether she was going to put the arm band back on that day before I sent her home. At the time I sent her home she did not have the arm band on. She could not at that time have returned to her class without wearing the arm band because I wanted to talk to her parents. This was a discretionary action on my part, acting in my duty and authority as girls' adviser. I have discussed these matters with Mr. Pratt and Mr. Willadsen since that time informally, and I hope they have acquiesced in what I have done. There has been no criticism or revocation of my acts by them.

DONALD M. WETTER, Defendant, called as an adverse witness pursuant to Rule 43 testified as follows:

I am Donald M. Wetter, 6004 College Avenue, Principal of North High School. On Friday, December 17, 1965, I recall an encounter between myself and John Tinker, pupil at North High School, because the teachers had been advised by myself to refer to the office any student who appeared wearing a black arm band. This had been adopted as an acting policy by the counsel of principals and the Director of Secondary Education at a meeting of them the day previously. At the time the policy was enacted, no student had worn an arm band at North High School.

Cross-Examination by Mr. Herrick.

When John came to my office he was wearing a black arm band which was plainly visible to me. I asked him

if he was familiar with the policy and he said that he was. I advised him that since he was aware of this policy he knew that I had the obligation of asking him either to remove the arm band and return to classes or that it was my duty to call his parents and ask one of them to come and pick him up at my office, and he would not be permitted to return to classes until he removed the arm band or the policy was changed. I further advised him that this policy had been made with my knowledge and concurrence.

He told me that his purpose in wearing the arm band was to protest the activity in Viet Nam; particularly the deaths, and to attempt to influence a truce. He said he would not remove the arm band. When I attempted to call John's home I was told by my secretary that his father was in the outer office. I explained to John's father that a policy had been adopted that arm bands could not be worn but that John would not be formally suspended; that he could return to school whenever he saw fit to remove the arm band. I told him that he would not suffer any consequences so far as grades because of this particular activity and that I would do everything within my power as the principal of North High School to protect his rights, including his personal welfare.

Before John's father arrived I reminded John that we had a short time previously had a school program in observance of Veterans Day, at which time I personally had appeared before the student body expressing my concern with respect to the war dead. I also advised that I personally felt that there were appropriate times for us to mourn our war dead, including this event and Memorial Day, and it did not seem appropriate or necessary to me to mourn them as he was doing at this time. I told him that I was a veteran of World War II and the Korean War.

DONALD BLACKMAN, Defendant, testified as follows:

Direct Examination by Mr. Johnston

My name is Don Blackman, 5915 Waterbury Circle, Des Moines, Iowa. I am employed as vice-principal at Roosevelt High School, and have been so employed for two years in that capacity. I recall having cause to come in contact with a student at Roosevelt--Christopher Eckhardt--on December 16th, 1965. When I came into the office that morning, Chris was sitting at the table along with Bruce Clark. Bruce Clark was standing I believe, and three or four other boys were around there in the room. It is a small reception room The only thing unusual about Chris's clothing was that he had the arm band. It was just a black arm band, I don't know how wide it was. Later on after we had a little conference I sent him home. I suspended him. Actually, it is an official suspension where the student is sent home and we ask that the student not return until he comes back with his parents. I sent notice of this suspension to the Department of Pupil Adjustment. We make three or four copies and a copy is sent to the Department of Pupil Adjustment through the Superintendent of Schools, and it would be available to the President of the Board. He was suspended because of the breaking of the rule that we had about wearing of arm bands to school. The rule said that we asked the students not to wear black arm bands to school. That was a rule stated as acting policy that was established by the principals at a meeting earlier that week. It was the acting policy of the Des Moines Independent School District, and all these actions which I have testified to were done in my official capacity as assistant principal.

Cross-Examination by Mr. Lovrein.

I asked Christopher Eckhardt to remove the arm band and then I asked him why he was wearing it. He said the same reasons as stated by Mr. Wetter and by Chris, in protesting the Viet Nam war dead. I told him I wasn't concerned with what he believed in; that I was concerned with the fact that he was asked or had been notified that they were not to wear arm bands in school and for that reason he was suspended. I told him that we could just not permit demonstrations concerning beliefs of various natures in school. Mrs. Cross, our girls advisor, came in during the time I was talking to Chris. Mrs. Cross attempted to reason with him and it was mentioned about the young man and his future as far as a record was concerned. The only mention about being accepted in college was that colleges are asking about each one of our students as far as their records are concerned. The suspension would show on the record. I called Mrs. Eckhardt, and we didn't agree as to the situation but I felt in discussing it she realized that Chris would be sent home. She said that Chris was acting as an act of conscience, of his own volition; that he wasn't forced to wear the arm band, and that he had the constitutional right to wear the arm band if he so desired.

Re-Direct Examination by Mr. Johnston.

I suppose I recall students wearing religious symbols such as crosses and things of that sort to Roosevelt from time to time. I suppose there would be political buttons involving campaigns for president and vice president, I never really noticed, frankly. There is no regulation against this sort of political demonstration.

E. RAYMOND PETERSON, Defendant, called as a witness by the Plaintiffs testified as follows:

Direct Examination by Mr. Johnston.

I am E. Raymond Peterson, 5612 Harwood Drive, Des Moines, Director of Secondary Education in the Des Moines Independent School District.

I called a meeting at the direction of the superintendent of schools and assistant superintendent of schools to be attended by the principals of the Des Moines Independent School District on Tuesday morning December 14th, 1965. It was at this meeting that the policy prohibiting the wearing of arm bands was made. The policy was that the students, "if they attended school, demonstration type approach, that the students would be asked, when recognized that this was true, by the teacher or whenever it was first noticed, and that the student was to be asked to remove the black arm band." If the student refused, then the student would be sent to the particular building in which the student was then housed and would be asked by the administrative personnel in the building to remove the black arm band. If the student still refused to do so, then the parents would be contacted if possible and the parents informed of the situation and asked if they would like to ask their student—their child—or boy or girl to remove the black arm band. They had that privilege of so doing. If there still was refusal then the student would be sent to the home until such time that the black arm band should be removed or that the Board of Education should reverse the decision as full policy.

"Q. Well, now, have you ever participated before in the promulgation of a policy prohibiting the wearing of a religious or political insignia?" "A. We have no indica-

tion during the time that I have been here of any demonstration which might come about because of this reason."

"Q. So this policy was directed solely at the students from whom you had heard were going to wear black arm bands to support their views on the Viet Nam war?" "A. Not at the students; at the principles of it."

"Q. I don't understand that." "A. We had no particular students in mind whatsoever. No individual students. It was those who might go against the regulation. That could have been any of the 18,000 students."

"Q. But it was the principle involved?" "A. That's what I said, yes, the principle of the situation."

"Q. Over the Viet Nam War?" "A. No, it was the principle of the demonstration."

"Q. Was the regulation as it was promulgated specifically related to the wearing of the black arm bands?" "A. It was at this time, this particular meeting, yes."

"Q. Was there anything said about wearing them as regards to the war in Viet Nam?" "A. The objection to the policy that the United States Government was carrying out as to Viet Nam was the purpose."

Quotations from the newspaper that I said, "For the good of the school system we don't think this should be permitted. The schools are no place for demonstrations. We allow for free discussion of these things in the classes. The policy was based on a general school policy against anything that was a disturbing situation within the school. The school officials believe that the educational program would be disturbed by students wearing arm bands." are correct statements of the policy as I remember it.

Defendant's Exhibit Two is a photocopy of the reprint of the article which correctly states the policy.

Defendant's Exhibit Three is a policy that was promulgated, considered and adopted by the school board about the time arm band situation arose.

Defendant's Exhibit Four is a report that I made to Dr. Davis.

It's understood among the principals that anything which interrupts the general educational procedure of the school may be excluded by the principal in the building itself. Now, as long as it is part of the curriculum and promotion, this is a different situation.

ORA NIFFENEGGER, Defendant, called as a witness for plaintiffs testified as follows:

Direct Examination by Mr. Johnston

I am a professional man. I am an attorney. At the present time I serve in the capacity of Director (should be President) of the Board of Directors of the Des Moines Independent School District. I was selected by the free and popular election of my fellow board members. I was elected as a member of the Board by the people of the Independent School District of Des Moines. The other members of the Board who serve with me are Mrs. Rolland Grefe, Mr. Arthur Davis, Dr. Caudill, Reverend Keck and John Haydon. I am the same Ora Niffenegger who is named as a defendant in this lawsuit and the other folks that I have named as Board Members are named as defendants in this action. The matter of suspension of students for wearing black arm bands in the Des Moines School District came to my attention in my capacity as President on Thursday, December 16th, 1965. The Board did not have occasion to act upon that policy at that time, but did at a later date. The first time we acted upon it

would have been the Tuesday following Friday, December 17th. At that time we did not reach a decision. We delayed the matter in order that we could get advice from our legal counsel and to make further investigation. We did get that advice and did make further investigation. We had occasion to meet again to act upon this matter at a regular meeting which would have been the first Monday evening in January. I don't have the record, but if my memory serves me, all members were present. In our January meeting, we, by a majority vote of the Board, voted to uphold the administrative policy that had been settled upon by our hired school officials and that policy was the prohibition against the wearing of arm bands in our school system. In taking that action, the Board was acting in its official capacity and under the statutes of the Code of Iowa, granting it authority to act as members of the School Board System.

Cross-Examination by Mr. Herrick.

On Thursday, December 16, I received four telephone calls within about half an hour. The first two were from Ross Peterson and then from Bruce Clark. Two women whose names I do not know for sure also called. The young men explained to me that they had been denied a constitutional right to wear arm bands and they wanted me to call an emergency meeting of the school board. You have a course of action to your school officials. They told me they had exhausted this means, and had turned to the last resort which was for me to call a meeting. I told them that formalities and custom and common courtesy had made it impossible to call a special meeting.

"I, also, when they told me the purpose of the meeting—they had explained to me—which was the opposition to the United States policy in Viet Nam, I explained to them the best that I could that I thought they were taking the wrong way out, that we had in this country of ours a well-defined way in which to handle this matter and that was that if they didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools. Nothing was said to me at that time about a Christmas truce or the mourning of the dead."

These people appeared at the regular meeting in January, represented by Professor Craig Sawyer of the Drake Law School at that time. Anyone could speak at the regular board meeting. If they would give me their names ahead of time we would have it on the printed agenda if there was time for it. That actually at this time there wasn't time to get it on the agenda but they were free to be present and represented. Our board room was filled to overflowing. There were a few signs present and on several occasions it was a little bit touch-and-go as far as maintaining order, but we did get through. In other words, there was some demonstration from people locally and apparently from outside the city.

RICHARD K. MOBERLY, called as a witness for the Defendants testified as follows:

Direct Examination by Mr. Herrick.

I am Dick K. Moberly, a math teacher at Warren Harding Junior High.

I recall in the middle of December when this matter of arm bands came up, having a discussion in my class that

was not on the arm bands entirely. It started from the report that was in the paper regarding the policy on arm bands.

This class is an exceptional group of students in an advanced track. They are very vocal and have good minds. They ask a lot of questions and sometimes questions other than mathematics, but I feel I should try to answer them as they come up. This was one of the things that happened during the school year. There was a question on why the policy was as it was put in the paper. We spent five or ten minutes on this particular point but it dragged on to the different demonstrations that were going on in the country at the time, and we could have spent as long as thirty minutes on it. I do believe it kind of wrecked the class, but I believe that we did get through it and end it and had a little time at the end for study and getting ready for tomorrow. I ended up by saying if there was going to be a demonstration in my class, it would be for or against something in mathematics and if they wanted to demonstrate in my school, they better be demonstrating about something that was in my class. I had a rule in my own mind, if they were going to talk about somebody, they should be there, and what we have in class is what we have in class, and should not be outside of class.

Cross-Examination by Mr. Johnston.

I have taught at Warren Harding two years. Mary Beth Tinker is a member of the advanced track class of mathematics that I teach. In the discussion in the class I expressed my views on demonstrations that were against things and not for things. Mary Beth Tinker has never worn anything that disrupted my class that I know of.

The wearing of political buttons for campaigns in my classroom has been held to a minimum. I think we have

had to run kids to the office when they were wearing a stream full of them down their front, and I think we have asked them to make it presentable at different times. One button with a picture of Senator Goldwater on it would not be objectionable in my view and I hope a button with President Johnson on it would not disrupt the class. I do not know if wearing a political button with a picture of President Johnson would be a violation of the policy. I am familiar with a symbol called the Iron Cross that was used by or that commonly became associated with the government of the Third Reich when it was the power in Germany because I was there. I have seen that symbol worn in my class and I have ridiculed people involved in wearing it; that they were degrading the country's mental spirit. I have told these students so, but I have never kicked them out of class over it. That's not included in the policy involving the arm bands so far as I know. These symbols have never caused any disruption in my class. I have seen these iron crosses worn since the suspension of Mary Beth Tinker for wearing arm bands.

Portion of deposition of LEONARD TINKER, which was admitted in evidence as Exhibit 8.

Direct Examination by Mr. Herrick

My name is Leonard Edward Tinker, Jr. I am forty-seven. I am a staff member for the Regional Office of the American Friends Service Committee. I have been with the Friends four years. Prior to that I was pastor in Methodist Churches in Des Moines and other parts of Iowa. I am an ordained Methodist minister. I was with the Epworth Methodist Church in Des Moines immediately

preceding my present work. I was in the Epworth Methodist Church five years. Prior to that we lived in Atlantic, Iowa. I was pastor of a Methodist church there. I am a member of the Methodist church now. I am a minister under appointment of that denomination. I have no connection with the Friends church. My job is called the Secretary for Peace Education. That's a staff job for the American Friends Service Committee. It is an instrument of Quaker concern but it is not technically part of the Friends, the religious society of Friends. It is a bona fide peace organization and I am under appointment by the Methodist appointive powers to serve in this capacity. I am appointed by the Methodist Bishop. This is a special appointment and I am appointed such as any chaplain would be appointed to a hospital or a college professor would be appointed to teach in a college. I am paid a salary by the American Friends Service Committee. The regional office is at 4211 Grand in Des Moines, and the national office is in Philadelphia, Pennsylvania. I am not in charge of the regional office, I am a staff member there. It is directed by a regional board and an executive secretary. This is a regional office of the national organization of Philadelphia, but all the A. F. S. C. work is carried under the direction of lay committees so every staff person and every program has some committee that is responsible for its work. I know the name of the organization known as the Students for Democratic Society, I am familiar with it generally.

Q. Was that organization the original name of the Black Arm Band. A. So far as I know this is not—is not a program of the Society. What it is, there were S.D.S. people at Eckhardt's home. As I understand it, this was proposed at a meeting which included students, some of

which were related to S.D.S. and some adults at the Eckhardt home, on Saturday, December 11, 1965. I don't know who called the meeting and I don't know that the group had any official standing. Some of the people who were present had previously attended and gone to Washington, and they met with the students afterwards. I was not a part of that meeting. This was not an outgrowth of some prior meeting in Washington, D. C., but people who had been to Washington then assembled at the Eckhardts. The Washington meeting was a march. I don't know the date of it. I don't know the date of that meeting and I did not participate in that event. They did march into the Capitol. People concerned for peace in Viet Nam went back to Washington and some of these same concerned people met at the Eckhardts', students and adults, and I came into the meeting at the very close of the session to get my wife, I guess. I was not at the meeting, I came at the end to get my wife. I am generally aware of what took place because they told me. There was one of the proposals apparently that came out or was suggested was that students and others, I guess they used the word concerned Americans, wear black arm bands to support the truce, supported by Senator Kennedy, and to mourn the deaths in Viet Nam. I will read this from notes that I have taken at that meeting.

The students decided finally on several activities. One, to wear black arm bands as symbols for mourning for all dead in Viet Nam and to urge acceptance of a Christmas Eve truce, preferably hope and end it as suggested by Bob Kennedy. Two, to have a day long fast (a) Thursday, December 16th, (b) December 31st if the war was not ended by then. The band wearing would commence Thursday, December 16th and I think the rest here is not relevant

perhaps. That's the decision I have which was reported to me, was that these were college students and not high school students, as far as I know. According to the report that I have, there was another meeting which was held at the Eckhardts' home on Sunday, December 12th. This was a meeting of high school liberal religious youths. These meetings are held weekly at different parents' homes of high school members of the group, under the auspices of the Unitarian Church. They are associated with them, I don't know what the exact relationship is. This meeting was at the Eckhardts' home by coincidence. They just happened to have two meetings at their home on two successive days and Chris Eckhardt, their son, is a member of this religious group, and the action of the college students and others, the date previous was reported to the whole meeting of the Liberal Religious Youth. I think I should mention one other thing rather relating to this evening meeting at Eckhardts and that is that the group did not take any collective action as far as the students', the college students', proposal of the day before. My notes indicate they decided each member could decide for himself if he wanted to join this college students' plan. I don't know if my children were at either of these meetings. I guess they weren't. Somebody told my children of the plan, but I don't know exactly who it was. I would assume that in talking about the situation at home after such a meeting, we would discuss what went on there, but to my knowledge their interest in participating in it was stimulated by talking to somebody else later, some high school student later, and they can tell you who it was in detail. I do know when I first talked with them about wearing the arm bands this wasn't a program you understand, I mean you are talking about a situation here where somebody goes to a meeting, they come home, and I cer-

tainly don't know whether we discussed the matter or whether we didn't after returning home. I know my children went to school with a black arm band. They knew about the proposal for college students to wear the arm bands. This apparently was told them by one of the high school students that was attending the Liberal Religious Group session and they decided they believed in this and that they would wear the arm bands. We did discuss it in the home before they went. I don't know where they got the arm bands. I suppose they found a piece of black ribbon, I certainly didn't provide them that morning. I knew they were going to wear the arm bands and I knew of their concern at this point.

By that time I knew that the School Board had announced this was not permissible and I raised a very serious objection in the conference with the youngsters and with my wife as to whether or not they ought to do this, and in the ensuing discussion I became convinced that this was very definitely a matter of conscience for them, that they were not lightly defying authority which I take if they should not lightly do, but they had a conviction and that this was a leaning of their conscience and I had to make a choice as to whether or not I would stand by my children in doing so, in saying something that I thought was true, honorable and either had to be with them or not with them, and I felt that in that situation I had to stand with them, and I still do.

Q. Well, if I understand you, you thought regardless of the fact that this violated a school regulation? A. No sir, not regardless of the fact, not regardless of the fact at all, but given the fact of a school regulation and also the fact of their own conscience and also of their assuming values and opinions that I hold certainly, and given the constitutional rights that I think they have given this set

of facts, it seemed to me that I had to support them in what I considered the exercise of their own conscience and of their own constitutional right.

Q. Now you ignored the fact that this was done in the school building. A. I did not ignore the fact at all, sir.

Q. You felt that regardless that it violated a regulation, you know to wear the arm bands, that nobody would bother them? A. I thought the school authorities had to obey the constitution and I still do. It was my position that my children were involved in a matter of their conscience and that they have both a right to conscience and a right to speak, and these rights are very primary rights in my mind so I intend to uphold them.

Q. And you felt that that was regardless of the place where they were to express their conscience or their belief? A. Well, a person's conscience, sir, is not restricted to place. Nor by the way is the constitutional right of free speech as far as I know. I do not feel that you can say anything you want to in the school. I don't think I can say anything I want to anywhere.

Q. You are not inhibited by regulation of the school? A. I am inhibited by all, I'm not an anarchist in the least. I believe in the exercise of authority. I believe authorities ought to be obeyed but not absolutely always. There are times when they must also be questioned and it seemed to me this was one of these times.

I did not go talk to the school authorities prior to the time the arm bands were worn, nor did the authorities talk to me. They knew we wanted to wear arm bands because the students had already gone to them and talked to them about it. The youngsters themselves tried to approach the School Board and they were not successful. I

did not approach the School Board. There were two of my youngsters involved in this situation. I have six children, five of them were in the schools. I had a third one, Paul Tinker, who wore an arm band. Paul was then eight. He attends Cattell School. He came to school with an arm band. Hope did also. Hope was then eleven. She attended school at Madison. They got the arm bands at home. I don't know whether they got them themselves, whether their mother got them for them, I don't know. I wouldn't know whether there was that much black cloth in the house.

As I recall, I did ask John to call in the event he encountered difficulty wearing the arm band. I don't know whether John called before he reported to the principal's office. I don't know the sequence. As I recall I was not there by the time he reached the principal's office. I visited with the adviser. It was the principal, it must be, I saw the principal then. I don't remember that conversation. I assume we talked about the problem. I guess John accompanied me home. As I recall, John called me, either he did or the school did, I think he did and so I went down, but I didn't keep a record of all sorts of detail, I don't think this is germane.

I was present at the meeting of the School Board on Tuesday following that, the 21st. I would not question the newspaper accounts that there were about two hundred students and adults that attended the meeting. Professor Sawyer was not employed, he happened to be at the meeting because he was secured. He agreed to serve as a spokesman for the group. The paper states there was a picket line formed outside the Board Office. I don't question that.

Q. It was made up of this group, Students for Democratic Society? A. The newspaper listed the names. I am not aware of their relationship. If the newspaper listed the names the youngsters must have given them that information.

Q. Well, that's what the paper said, they were members of this group, members of the Democratic Society? A. It may be.

Q. Is that correct? A. I have no relationship to that operation.

Q. You are familiar with the organization, are you not? A. I am familiar with several organizations that I don't operate.

Q. Well, I am at this minute interested in the particular group, Students for Democratic Society. They were critical of the U. S. Policy in Viet Nam. A. All right, press the matter.

Q. And they had been critical of the U. S. Policy in Viet Nam? A. It just happens that there are many people critical of the policy in Viet Nam.

Q. May I ask you to answer my question? A. Go ahead.

Q. Were they critical? A. Well, certainly they were critical.

The paper states that it was suggested at that meeting on TV that issues like the Vietnamese war should be discussed in the classroom where it was organized under some discipline. The paper quotes me as saying how much control can you have and still have a democratic country? I assume I said that. I would say it again, I think it is a good statement. I say this against the background of

seeing the Japanese school system, where there is a degree of control that I think does preclude the kind of democracy that I am interested in.

The people actually excluded from school were not members of the S.D.S. They were not, nor were they directed by the S.D.S., nor were they organized by the S.D.S. They were not implementing the program of the S.D.S. That is a false assertion. The meeting which advocated the wearing of the black arm bands was not an official S.D.S. meeting. You see this is not a program of the S.D.S. as it came to pass in the Eckhardts' home. It is not that kind of a situation. This group which included persons who belong to S.D.S. made this proposal to wear black arm bands, but that does not make it an S.D.S. proposal, not out of that group. The group that appeared at school with black arm bands were not carrying out the thing that had been advocated by S.D.S., because this was not advocated by the S.D.S. That is a false assertion.

I am saying that these youngsters carried out a program of the S.D.S. is a false assertion. I am saying that it is a falsehood. They were wearing black arm bands. I have no knowledge of the S.D.S. advocating the wearing of black arm bands. If you mean by S.D.S. the organization itself, I don't know that much about the organization.

The Women's International League for Peace and Freedom is a Women's organization for peace and freedom, what it says it is. Mrs. Eckhardt has an office in it. These two meetings that were held on the 11th and 12th of December were both at the Eckhardts' home.

I was present at a meeting on December the 19th, 1965. I believe it was a Sunday night meeting where some fifty persons were present to discuss fighting the suspension of

the students for wearing black arm bands. It was held at the Friend's House, those are my offices at 4211 Grand. The meeting was called, as I recall, by a group of students. I suppose they happened to meet at the Friend's House because they asked us if they could meet there and we said they could. I was at the meeting, I was there late, there was a lot of discussion and I don't know whether you could call it a strategy meeting or not. There was a lot of concern about the situation and many people were, you know, involved in the meeting, and at the meeting they were just discussing the situation. This was just ahead of the Tuesday meeting on the 21st where the group appeared before the School Board. Craig Sauer (believe should be Sawyer) was at this meeting. As I recall, he represented the I.C.L.U., Civil Liberties Union. I have no record of the count of the people who attended that meeting, my guess is, more than twenty and under forty. I don't know.

I would say it was held at Friend's House, 4211 Grand, that is a distinction by the way, see the American Friends Service Committee uses space at Friend's House. It is a big building at 4211 Grand. It is occupied by the local Friends Meeting and then the officers of the A.F.S.C. are there but other groups meet there, not infrequently. I don't have any record of any discussion there that night about the fact that some of the wearers of the arm bands having been slugged.

I called the meeting on December 19, 1965, because my youngsters were having a problem and some other youngsters were having a problem and I thought the parents ought to get together and the youngsters and discuss the situation. I asked my children the names as I recall, I asked my children the names of the other students and telephoned their parents.

Q. I ask you if this helps refresh your recollection as to the origin of the wearing of the arm bands and I'm referring to the newspaper of December 22, 1965; it says Mrs. Eckhardt is president of the Des Moines Chapter of the Women's International League for Peace and Freedom which joined with S.D.S. in recommending that the arm bands be worn. Now, does that refresh your recollection as to the origin? A. Where is this reported for now?

Q. This is reported in the paper on December 22, 1965. A. Well, will you repeat the question now?

(Whereupon, the last question was read by reporter.)

A. If the Women's International League for Peace and Freedom had a meeting and decided this, I have no knowledge of that decision of that group.

Q. Were you familiar with the report in the paper? A. I read the paper, but the implication of the paper as I understand it is not that this group met in any official way to instigate the wearing of the arm bands.

I had previously spoken against the U. S. policy in Viet Nam. I had spoken at a meeting at the post office in October.

Q. Do you agree with the statement that Professor Sauer (Sawyer) made out at the School Board Meeting that he would support the freedom to wear a Nazi arm band or arm bands saying "down with the school board"? Is that your idea of freedom, that constitution— A. Oh, that's a long question, I'd rather not answer that.

Q. You don't have an answer to it? A. I didn't say I didn't have an answer to it. I said I don't want to answer it now.

Q. Well, for what reason? A. Well, it's an involved question.

Q. Can I make it simpler then? Did you say that you would subscribe to the right to wear a Nazi arm band in school?

(The question was not answered on the advice and instructions from counsel and similar questions were not answered for the same reason.)

When Mary Beth wore the arm band she attended Warren Harding Junior High. I knew of her going over with the arm band. I went over to get her because either she or the school called me. As I recall, Mary had been sent home the day before and we were asked to come to the school. I didn't go and get her the day before. I think she came home on her own.

Portion of the deposition of JOHN TINKER, the whole thereof having been admitted in evidence as defendants' Exhibit 7.

I attended the meeting of some fifty people at the building where my father's office and there were some accounts by some of the students there as to physical violence that had been inflicted upon them over the wearing of these arm bands. Either Bruce Clark or Ross said somebody had struck him. It could have been both of them. I was there and recall hearing somebody say that.

Portion of the deposition of CHRISTOPHER ECKHARDT, the whole of said deposition having been admitted in evidence as defendants' Exhibit 5.

Q. Well, maybe I'm wrong. I want to apologize to you. I think we are both confused, if the newspaper article is right. The newspaper article says the meeting at the Friends' Service Committee at 4211 Grand Avenue was December 19th, Sunday night, 1965, and this is the meeting that I have reference to, and I think it's the meeting you have reference to. A. Right.

Q. Not a meeting at your house. A. Okay, yes.

Q. And the newspaper account says that there were about fifty persons there. A. Yes. Well, see, there was—let's see, I also thought there was a meeting Thursday, but maybe there wasn't. Maybe that's the meeting I'm thinking of.

Q. Well, at any rate according to the newspaper Ross Peterson and Bruce Clark talked about some violence or threats of violence or threats of violence that happened to them or others during the week prior. Do you recall any talk about that? A. Well, Bruce and Ross had worn black suits on Thursday or Friday and they went down to the Student Center down by Roosevelt Shopping Center, right there, and they had gone down there and there was some student who did not attend Roosevelt. I don't know his name. He had attended Roosevelt and was kicked out or something, and he did push them or something like that.

Q. Well, my specific question was whether you recall them telling about it there. A. Yes.

Q. And there was talk about what you should or should not do relative to picketing school board meetings; do you recall that? A. No.

Q. Well, what else do you recall about the meeting, if anything? A. Well, the one student had told how when he had worn the armband how nothing happened at his school.

Q. Is that Perry Hutchison at Lincoln? A. Right, right.

Q. That's the party you were trying to think of previously, is it not? A. Yes.

Q. Well, according to the newspaper article Mrs. Sheri Hutchison of 1228 Birch Lane said her son Perry had worn an armband to Lincoln and was not suspended. "He took it off when told by a teacher that it was illegal." Now, that's what the newspaper report said. Do you recall that? A. Well, he wasn't able to make it that night. She said he would have came but she thought it was for parents only, and I think he had worn it one—he thought it began on Monday or something, and he had worn it a full day at school and then had maybe worn it Tuesday and then Wednesday, let's see, Tuesday or Wednesday the principals had their meeting and he had worn it a day and was told to take it off so he took it off, but he had worn it for a day.

Q. So this was before the principals had had any meetings or announced or decided on any policy at all? A. Right.

Q. That's your understanding of it anyway? A. Right.

Q. You never talked to him personally about it, have you, or have you? A. No. I don't think so.

The defendants' Exhibit One (1), admitted into evidence, is as follows:

WE MOURN

"ATTENTION STUDENTS"

Some high school and college students in Iowa who are interested in expressing their grief over the deaths of soldiers and civilians in Vietnam will fast on Thursday,

December 16th. They will also wear black arm bands starting on that same day, December 16th. The National Liberation Front (Vietcong) recently proposed a 12-hour truce on Christmas Eve. The United States has not yet replied to their offer. However, Senator Robert Kennedy has suggested that the truce be extended indefinitely pending negotiations. If the United States takes this action the arm bands will be removed. If it does not the bands will be worn throughout the holiday season and there will be a second fast on New Year's Day. High school and college students are also encouraged to forego their usual New Year's Eve activities and meet together to discuss this complex war and possible ways of ending the killing of Vietnamese and Americans.

A meeting in Des Moines on New Year's Eve will be held at the home of Bruce Clark, 925—29th, for further information call his home. The meeting is being sponsored by Liberal Religious Youth the youth organization of the Unitarian Universalist Association. All students interested in saving lives and ending the war in Vietnam are urged to attend.

PLEASE COME!

DEFENDANT'S EXHIBIT 2

D. M. Schools Ban Wearing of Viet Truce Armbands

(Register 12-15-65) By Jack Magarrell

Des Moines school officials said Tuesday that high school students will not be permitted to wear black armbands at school in support of a truce in Viet Nam.

A few students at Roosevelt High School were reported planning to wear the armbands Thursday.

Several groups of Iowa college students opposed to U. S. policy in Viet Nam have designated Thursday as a day of fasting and wearing black armbands to encourage U. S. acceptance of a Viet Cong offer of a 12-hour cease-fire on Christmas Eve.

Roosevelt Principal Charles Rowley refused to comment on the school's attitude toward the armbands.

E. Raymond Peterson, director of secondary education, met with high school principals Tuesday to assure a uniform policy.

Questioned about the policy, Peterson said, "For the good of the school system, we don't think this should be permitted."

"The schools are no place for demonstrations," Peterson said. "We allow for free discussion of these things in classes."

Peterson said the decision not to allow students to wear the black armbands was based on a general school policy against "anything that is a disturbing situation within the school."

School officials believe the educational program would be disturbed by the students wearing armbands, he said.

Peterson said the meeting with high school principals dealt with several other matters which school officials considered more important than a proposal by "eight or 10 students" to "get publicity" by wearing armbands.

DEFENDANT'S EXHIBIT 3

PROPOSED POLICY FOR SECONDARY PRINCIPALS REGARDING STUDENT CONDUCT

The legal Code of Iowa makes specific provisions for the suspension or expulsion of a student from the public schools of the state. One of the valid reasons for suspension and expulsion is conduct detrimental to the best interests of the school. (Chapter 282.4 of the Iowa Code)

One of the most important responsibilities of a building principal is to help establish and maintain an atmosphere within the school which will allow teachers to achieve the primary purpose of public school education—that of educating each person to his maximum potential.

Since the best interests of the school may be served only through the establishment and maintenance of an orderly, disciplined faculty and student body it is deemed essential that school administrators be delegated, and assume, the responsibility of establishing and maintaining such an environment. Conduct by teachers or students which tend to disrupt the orderly conduct of the everyday educational program of the school, or which are considered by school administrators as likely to do so, must therefore be of immediate and urgent concern. When a resolution of problems of acceptable conduct are impossible through personal conference with a student and his parents, a student may be suspended from school to provide an opportunity for all concerned to seek a solution to the problem of conduct without causing a continued disturbance or disruption of the educational program of the school.

It is our desire that all students in our schools present such an appearance and so conduct themselves that the

school attended can always be proud of them; however, should the conduct or dress of a student be such that it is believed that person or others will be distracted from the earnest pursuit of the educational purposes of the day and the moment it is expected that appropriate disciplinary action will be necessarily be forthcoming.

DEFENDANT'S EXHIBIT 4

DES MOINES PUBLIC SCHOOLS
Department of Secondary Education

December 29, 1965

TO: Dwight M. Davis, Superintendent

FROM: E. Raymond Peterson, Director of Secondary Education

SUBJECT: EVENTS LEADING UP TO BANNING OF ARM BANDS

The national news media indicated the arm band's original intent was in protest to U. S. government policy in Viet Nam. Later, it was changed to "mourning all the dead." Then, it included pressure for a Christmas truce.

Monday, December 13, Mr. Donald Haley, journalism teacher at Roosevelt, asked Ross Peterson, a student in Roosevelt, to talk to Dr. Rowley, Principal of Roosevelt, regarding an article that he would like to write and have printed in the school paper relating to Viet Nam. Not being able to find Dr. Rowley at that moment, Ross Peterson called Dr. Mitchum asking his opinion about the wearing of arm bands and the publishing of an article in the school paper related to it. Dr. Mitchum asked the student to hold up on this article until someone could talk to him.

Following this telephone conversation Dr. Mitchum contacted me and after some consultation with Dr. Davis, it was decided that I would call a meeting of the senior high school principals for 7:45 A.M. Tuesday, December 14, to ask them their suggestions for handling the wearing of black arm bands which was understood to take place on Thursday, December 16. All of the five senior high school principals were in agreement to follow the procedure as was later outlined in the board minutes of the meeting of December 21, 1965. The decisions to which the principals came was the same as that to which Dr. Davis, Dr. Mitchum, and I had come the day before. The principals made this decision without the knowledge of how the central office felt.

After talking to the principals, I called Dr. Mitchum to see if he wanted to talk to the student, Ross Peterson, or if he wanted me to talk to him. He suggested that since I was at Roosevelt, that I should go ahead and talk to the student. Dr. Rowley and I talked to the student and we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decisions was a just one.

Following the announcement to the students that arm bands would not be permitted, one of the students apparently contacted the newspaper. The reporter then contacted the school administrators for information. The reporter was asked not to write a story.

The secondary principals were called to meet on Thursday, December 23, to see if they thought it would be wise to alter the previous decision. All who were present felt that we had made a wise decision in spite of the public concern over one small aspect of our school program. The following reasons were given:

1. A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.

2. The schools hold appropriate assemblies on Veteran's Day to honor the dead. Also, Memorial Day is recognized.

3. The principals were following standard procedure for what is considered inappropriate dress, haircuts or other actions that attract attention.

4. Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed.

5. Principals felt that since the schools are made up of a captive audience, the other students should not be forced to view the demonstrations of a few.

6. One principal reported a Nazi arm band on a boy who came to school several weeks ago. When asked to remove it, he complied.

7. These students were sent home from school until such time as the students were willing to return without the arm band. No student was suspended for a specified length of time.

The subject of petitions came up for discussion. It appears that petitions are picked up if there is any disturbance. If they are of an internal nature, they are handled within the school. One of the principals stated that the person who originated one of the petitions that contained approximately 20 signatures came to him and asked that he destroy the petition. This petition was not addressed to any official or persons. There was another petition in support of the teachers who were named at the December 21 board meeting, and this petition was also picked up.

At the next principals' meeting, the principals will be informed that the students who were sent home for the wearing of arm bands will be permitted to make up the work missed without penalty.

The following students were suspended:

Bruce Clark—Roosevelt
Chris Eckhardt—Roosevelt
Christine Singer—Roosevelt
Mary Beth Tinker—Harding
John Tinker—North

On September 1, 1966, the Court made the following memorandum opinion.

The plaintiffs instituted this action against the Des Moines Independent Community School District, its Board of Directors and certain administrative officials and teachers thereof in an attempt to recover nominal damages and obtain an injunction pursuant to the provisions of 42 U.S.C., § 1983. Jurisdiction exists under 28 U.S.C., § 1343.

The events giving rise to this controversy took place in December, 1965. During the second week of that month, it came to the attention of certain school officials that several students intended to wear black arm bands for the purpose of expressing their beliefs relating to the war in Viet Nam. A regulation was then promulgated by officials of the defendant school district prohibiting the wearing of arm bands on school facilities. After the regulation had been established, the plaintiffs, John Tinker, Mary Beth Tinker and Christopher Eckhardt, wore black arm bands

to their respective schools.[1] Each of the plaintiffs testified that their purpose in wearing the arm bands was to mourn those who had died in the Viet Nam war and to support Senator Robert F. Kennedy's proposal that the truce proposed for Christmas Day, 1965, be extended indefinitely. The plaintiffs herein were all aware of the regulation prohibiting the wearing of arm bands when they wore them to school. After being in their schools for varying lengths of time, each plaintiff was sent home by school officials for violating the regulation prohibiting the wearing of arm bands on school premises. Each plaintiff returned to school following the Christmas holidays. They did not wear arm bands at that time.

The question which now must be determined is whether the action of officials of the defendant school district forbidding the wearing of arm bands on school facilities deprived the plaintiffs of constitutional rights secured by the freedom of speech clause of the first amendment. An individual's right of free speech is protected against state infringement by the due process clause of the fourteenth amendment. *Gitlow* v. *New York*, 268 U.S. 652 (1925). The wearing of an arm band for the purpose of expressing certain views is a symbolic act and falls within the protection of the first amendment's free speech clause. *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624 (1943); *Stromberg* v. *California*, 283 U.S. 359 (1931). However, the protections of that clause are not absolute. See, *e.g.*, *Dennis* v. *United States*, 341 U.S. 494, 503 (1951); *Near* v. *Minnesota*, 283 U.S. 697 (1931); *Pocket Books, Inc.* v.

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1. Plaintiff John F. Tinker, age 15, attended North High; plaintiff Mary Beth Tinker, age 13, attended Warren Harding Junior High; plaintiff Christopher Eckhardt, age 15, attended Roosevelt High; Paul and Hope Tinker, age 8 and 11 respectively, younger brother and sister of plaintiffs John and Mary Beth Tinker also wore arm bands to their respective schools.

Walsh, 204 F. Supp. 297 (D. Conn. 1962). The abridgement of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgement of speech that actually occurs. "In each case (courts) must ask whether the gravity of the 'evil', discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." *Dennis v. United States*, 183 F.2d 201, 212 (2d Cir. 1950).

Officials of the defendant school district have the responsibility for maintaining a scholarly, disciplined atmosphere within the classroom. These officials not only have a right, they have an obligation to prevent anything which might be disruptive of such an atmosphere. Unless the actions of school officials in this connection are unreasonable, the Courts should not interfere.

The Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D. C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in support of the rule prohibiting the wearing of arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation.

A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classroom. The avowed purpose of the plaintiffs in this instance was to express their views on a controversial subject by wearing black arm bands in the schools. While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance. The school officials involved had a reasonable basis for adopting the arm band regulation.

On the other hand, the plaintiffs' freedom of speech is infringed upon only to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Viet Nam war during any orderly discussion of that subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to the protection of the law.

Plaintiffs cite two recent opinions from the Court of Appeals for the Fifth Circuit in support of their position. *Burnside* v. *Byars*, Civil No. 22681, 5th Cir., July 21, 1966; *Blackwell* v. *Byars*, Civil No. 22712, 5th Cir., July 21, 1966. These cases involved the wearing of "freedom buttons" in Mississippi schools. In holding in one of the cases that the school regulation prohibiting the wearing of such but-

tons was not reasonable, the Court stated that school officials "cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." *Burnside* v. *Byars, supra,* at 9. While the decisions of the Court of Appeals for the Fifth Circuit are entitled to respect and should not be brushed aside lightly, they are not binding upon this Court. *John Deere Co.* v. *Graham,* 333 F.2d 529 (8th Cir. 1964). After due consideration, it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech.

The plaintiffs' request for an injunction and nominal damages are denied. Judgment will be entered accordingly.

Dated this 1st day of September, 1966.

On September 1, 1966, the following Judgment Entry was made:

Pursuant to memorandum opinion filed this date, which pursuant to Rule 52(a) constitutes this Court's findings of fact and conclusions of law.

IT IS ORDERED AND ADJUDGED that plaintiff's complaint is dismissed at plaintiff's cost.

Dated this 1st day of September, 1966.

/s/ Roy L. Stephenson
Chief Judge

On September 1, 1966, the following Notice of Appeal was filed:

Notice is hereby given that all plaintiffs in this action hereby appeal to the United States Court of Appeals for the Eighth Circuit from the judgment entered in this action on September 1, 1966.

Jesse, Le Tourneau & Johnston
By /s/ Dan Johnston
Attorney for Plaintiffs
917 Savings & Loan Building
Des Moines, Iowa

(Opinion)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 18,642

John F. Tinker and Mary Beth Tinker, Minors, by Their Father and Next Friend, Leonard Tinker, and Christopher Eckhardt, Minor, by His Father and Next Friend, William Eckhardt,
Appellants,

v.

The Des Moines Independent Community School District, The Board of Directors of the Des Moines Independent Community School District, Ora E. Niffenegger, Mrs. Mary Grefe, Arthur Davis, L. Robert Keck, George Caudill, John R. Haydon, Merle F. Schlampp, Dwight Davis, Elmer Betz, Gerald Jackson, Melvin Bowen, Donald Wetter, Chester Pratt, Charles Rowley, Raymond Peterson, Richard Moberly, Vera Tarmann, Leo Willadsen, Donald Blackman, Velma Cross, and Ellsworth E. Lory,
Appellees.

Appeal from the United States District Court for the Southern District of Iowa.

[November 3, 1967.]

Before VOGEL, Chief Judge; VAN OOSTERHOUT, MATTHES, BLACKMUN, MEHAFFY, GIBSON, LAY and HEANEY, Circuit Judges, sitting en banc.

PER CURIAM.

This is an appeal from a judgment entered September 1, 1966, by the United States District Court for the Southern District of Iowa, Central Division, dismissing plaintiffs' complaint, based upon 42 U.S.C.A. § 1983, seeking an injunction and nominal damages against defendants, the Des Moines Independent Community School District, the individual members of its Board of Directors, its superintendent and various principals and teachers thereof, for suspending plaintiffs from school for wearing arm bands protesting the Viet Nam war, in violation of a school regulation promulgated by administrative officials of the School District proscribing the wearing of such arm bands. 258 F.Supp. 971. Following argument before a regular panel of this court, the case was reargued and submitted to the court en banc.

The judgment below is affirmed by an equally divided court.

A true copy

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

Judgment

United States Court of Appeals
For the Eighth Circuit.

No. 18,642. September Term, 1967.

John F. Tinker and Mary Beth Tinker, Minors, by their father and next friend, Leonard Tinker, and Christopher Eckhardt, Minor, by his father and next friend,.

Appellants,

vs.

The Des Moines Independent Community School District, The Board of Directors of the Des Moines Independent Community School Distri , Ora E. Niffenegger, Mrs. Mary Grefe, Arthur Davis, L. Robert Keck, George Caudill, John R.Haydon, Merle F. Schlampp, Dwight Davis, Elmer Betz,Gerald Jackson, Melvin Bowen, Donald Wetter, Chester Pratt, Charles Rowley, Raymond Peterson, Richard Moberly, Vera Tarmann, Leo Willadsen, Donald Blackman, Velma Cross, and Ellsworth E. Lory.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the Judgment of the said District Court, in this cause, be, and the same is hereby, affirmed by an equally divided Court.

November 3, 1967.

(Order staying issuance of Mandate pending certiorari proceedings in Supreme Court, U.S.)

United States Court of Appeals
For the Eighth Circuit

No. 18,642. September Term, 1967

John F. Tinker and Mary Beth Tinker, minors, etc.,	)	
Appellants,	)	Appeal from the United States
vs.	)	District Court
	)	for the Southern
The Des Moines Independent Community School District, et al.	)	District of Iowa.

On Consideration of the motion of the appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, it is now here Ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

November 17, 1967.

(Clerk's Certificate)

United States Court of Appeals
For the Eighth Circuit.

I, Robert C. Tucker, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the Printed Record filed by appellants; the Supplemental Printed record of appellees, on which the appeal from the United States District Court for the Southern District of Iowa was heard and determined in said Court of Appeals, and also Proceedings in said Court of appeals consisting of Opinion and Judgment entered thereon, and Order staying issuance of mandate of said Court of Appeals pending Certiorari proceedings in the Supreme Court of the United States, in the case of John F. Tinker, et al. Appellants, vs. The Des Moines Independent Community School District, et al., Appellees, No. 18,642, as full, true and complete as the originals thereof remain on file and of record in my said office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit at office in the City of St. Louis, Missouri, this seventeenth day of November A. D. 1967.

Robert C. Tucker,
Clerk of the United States
Court of Appeals for the
Eighth Circuit.

Office-Supreme Court
FILED
JAN 17 1968
JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. [redacted] 21

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Petitioners,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS and ELLSWORTH E. LORY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

DAN JOHNSTON
917 Savings & Loan Building
Des Moines, Iowa 50309

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y. 10010

Attorneys for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. .....

JOHN F. TINKER, *et al.*,

Petitioners,

—v.—

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled case on November 3, 1967.

Citations to Opinions Below

The opinion of the Court of Appeals, per curiam, sustaining the judgment of the District Court is printed in the Appendix, *infra*, pp. 1a-2a, and is reported at 383 F. 2d 988. The District Court opinion is printed in the Appendix, *infra*, pp. 4a-8a, and is reported at 258 F. Supp. 971.

Jurisdiction

The judgment of the United States Court of Appeals for the Eighth Circuit was entered November 3, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Whether the First and Fourteenth Amendments permit officials of state supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum.

Statute Involved

Section 282.4, Code of Iowa, 1966:

> "Majority vote—Suspension. The board (of directors of a public school corporation) may, by a majority vote, expel any scholar from school for immorality, or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental to the best interests of the school; and it may confer upon any teacher, principal or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board."

Statement of the Case

In December, 1965, the minor petitioners, pupils of respondent school district, decided to wear bands of black cloth on the sleeves of their clothing to demonstrate support for a proposed indefinite truce in the Vietnam war and to demonstrate that they mourn the deaths of those killed in that war (R. 11). The pupils are active in Quaker and Unitarian religious organizations (R. 11, 12, 21, 26).

Upon learning of this plan, the respondents, who are high school administrators, met and decided that wearing of arm bands by pupils in school would be prohibited, and that those who violated the prohibition would be suspended (R. 35).

The minor petitioners wore arm bands to school and were suspended, but were allowed to return without the arm bands (R. 12, 15, 21, 23, 24, 26, 28). The record affirmatively establishes that the arm bands neither disrupted nor threatened to disrupt decorum or discipline within the schools (R. 13-15, 18-19, 21-24, 26-29, 39).

The pupils and their parents petitioned the District Court for damages and injunctive relief under 42 U. S. C. 1983 (R. 1, 7). After hearing, the petition was dismissed (R. 45). The District Court agreed with petitioners that the circumstances were the same as in *Burnside* v. *Byars,* 363 F. 2d 744 (5th Cir. 1966) but declined to follow that decision (R. 45; App., *infra,* p. 8a). Rather, the District Court noted a general nationwide atmosphere of dissent and dispute over the Vietnam war and held in view of that atmosphere, that the respondents' prohibition was not unreasonable (R. 43, 44; App., *infra,* pp. 6a, 7a).

On appeal to the United States Court of Appeals for the Eighth Circuit, the case was argued twice: once before a three-judge panel and subsequently before the court *en banc*. The decision of the District Court was affirmed by an evenly divided court with no discussion in the opinion of the substantive issues in the case.

Reasons for Granting the Writ

Certiorari should be granted because the Court of Appeals, in affirming the District Court, has rendered a decision in conflict with another Court of Appeals on an important question of federal law which has not been but which should be settled by this Court.

In *Burnside* v. *Byars*, 363 F. 2d 744 (1966), the Court of Appeals for the Fifth Circuit held that public school officials had violated the First Amendment by suspending students for wearing small "freedom buttons" symbolic of their opinions that citizens have a right to vote and to have their votes count equally. As in the instant case, the conduct had been prohibited by school authorities ostensibly to maintain discipline although no actual disruption, or threat of it, had been shown. Furthermore, in both cases school authorities testified that the suspensions were for violating a regulation, not for causing disruption [363 F. 2d at 748; R. 34]. Though the District Court below believed *Burnside* to be factually the same as the case at bar, it reached an opposite conclusion because decisions of the Fifth Circuit "are not binding upon this Court" (R. 45; App., *infra*, p. 8a).

The central conflict between the decisions in the Fifth and Eighth Circuits turns on the extent to which school officials may suppress otherwise constitutionally protected expression. The Fifth Circuit has held that there must be a material and substantial interference "with the requirements of appropriate discipline in the operation of the school." 363 F. 2d at 749. The decision below, however, held that the mere apprehension of "reactions and comments from other students . . . [which] would be likely to disturb the disciplined atmosphere . . ." (R. 44; App., *infra*, p. 7a), is sufficient to permit suppression of speech. Cf. *Terminiello* v. *Chicago*, 337 U. S. 1 (1949).

These two views reflect conflicting models of the school community. On the one hand the school is thought of as a model of a democratic community, designed to instill the value of procedural due process, the rights of free speech and free expression which are to be encouraged in the adult democratic society. See, e.g., *West Virginia* v. *Barnette*, 319 U. S. 624 (1943); *Burnside* v. *Byars*, *supra*; *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961); *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613 (D. M. D. Ala. 1967); *Estaban* v. *Central Missouri State College*, D. W. D. Mo., No. 16473-4, October 3, 1967.

On the other hand, the school has been considered to be patterned after the parent-child relationship, with the teacher posed as the figure of authority presiding over the as yet unequal children. This model stresses the importance of the teacher—or the administrators—being best able to judge unilaterally what may possibly disrupt the educational process. The decision below follows this model in adopting respondents' contentions (R. 34, 35, 36, 38, 39)

that public schools have unqualified authority to prohibit political expression in school whether or not disruptive.

The decision below, insofar as it holds that constitutional restraints upon governmental interference with First Amendment rights or other provisions of the Bill of Rights, do not apply to public schools, is also directly in conflict with applicable decisions of this Court. Thus, this Court has held that the power to compel education of children does not sanction invasion of their religious freedom. *West Virginia* v. *Barnette, supra; School District* v. *Schempp,* 374 U. S. 203 (1963); *Engel* v. *Vitale,* 370 U. S. 421 (1962). As this Court has said, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault,* 387 U. S. 1 (1967).

Clearly, whatever rule is finally evolved must take into consideration the necessity for discipline and decorum in the schools. Some forms of expression which would be protected if conducted in public streets, would of course disrupt schools and the education process. But it does not follow that school officials may exercise a totally free hand in banning all speech—including, as here, a form of expression which causes no interference at all with the education process.[1]

Protection of the affirmative values involved in this case is another compelling reason for granting certiorari. The right to free speech embodied in the First Amendment is a lifeless right unless encouraged during school years. If citizens are instructed from kindergarten through high school that their political expression may be curtailed at

[1] This case also involves discriminatory enforcement of the First Amendment, for some kinds of political symbols had been allowed including Presidential campaign buttons and Iron Crosses associated with the Third Reich. See R. 34, 39-40.

the whim of school officers, and indeed may be forbidden entirely for the sake of preserving discipline, society will be the loser, for views of that sort are not easily abandoned when drummed into childrens' heads during their most formative years.

As far as this case is concerned it has so far taught Des Moines school children that speech is free only so long as it satisfies the government's choice as to time and place. The more fitting lesson yet to be learned—the lesson of the First Amendment—is that speech is free except when it presents a clear and present danger of a substantial evil which the state has a right to prevent.[2]

CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

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January 17, 1968

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[2] The District Court below relied upon *Dennis* v. *United States*, 183 F. 2d 201 (2nd Cir. 1950), aff'd 341 U. S. 494 (1951). It made no reference, however, to the subsequent holding in *Yates* v. *United States*, 354 U. S. 298 (1957), which seems effectively to have repudiated *Dennis*.

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 18,642

TINKER, *et al.*,

Appellants,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *et al.*,

Appellees.

Before VOGEL, Chief Judge; VAN OOSTERHOUT, MATTHES, BLACKMUN, MEHAFFY, GIBSON, LAY and HEANEY, Circuit Judges, sitting en banc.

Per Curiam.

This is an appeal from a judgment entered September 1, 1967, by the United States District Court for the Southern District of Iowa, Central Division, dismissing plaintiffs' complaint, based upon 42 U.S.C.A. § 1983, seeking an injunction and nominal damages against defendants, the Des Moines Independent Community School District, the individual members of its Board of Directors, its superintendent and various principals and teachers thereof, for sus-

APPENDIX

Court of Appeals Opinion

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18,642

TINKER, *et al.*,

Appellants,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *et al.*,

Appellees.

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pending plaintiffs from school for wearing arm bands protesting the Viet Nam war, in violation of a school regulation promulgated by administrative officials of the School District proscribing the wearing of such arm bands. 258 F.Supp. 971. Following argument before a regular panel of this court, the case was reargued and submitted to the court en banc.

The judgment below is affirmed by an equally divided court.

Court of Appeals Judgment

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18,642

TINKER, *et al.*,

Appellants,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *et al.*,

Appellees.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the Judgment of the said District Court, in this cause, be, and the same is hereby, affirmed by an equally divided Court.

November 3, 1967.

District Court Opinion

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

TINKER, *et al.*,

Plaintiffs,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *et al.*,

Defendants.

On September 1, 1966, the Court made the following memorandum opinion.

The plaintiffs instituted this action against the Des Moines Independent Community School District, its Board of Directors and certain administrative officials and teachers thereof in an attempt to recover nominal damages and obtain an injunction pursuant to the provisions of 42 U.S.C., § 1983. Jurisdiction exists under 28 U.S.C., § 1343.

The events giving rise to this controversy took place in December, 1965. During the second week of that month, it came to the attention of certain school officials that several students intended to wear black arm bands for the purpose of expressing their beliefs relating to the war in Viet Nam. A regulation was then promulgated by officials of the defendant school district prohibiting the wearing of arm bands

on school facilities. After the regulation had been established, the plaintiffs, John Tinker, Mary Beth Tinker and Christopher Eckhardt, wore black arm bands to their respective schools.[1] Each of the plaintiffs testified that their purpose in wearing the arm bands was to mourn those who had died in the Viet Nam war and to support Senator Robert F. Kennedy's proposal that the truce proposed for Christmas Day, 1965, be extended indefinitely. The plaintiffs herein were all aware of the regulation prohibiting the wearing of arm bands when they wore them to school. After being in their schools for varying lengths of time, each plaintiff was sent home by school officials for violating the regulation prohibiting the wearing of arm bands on school premises. Each plaintiff returned to school following the Christmas holidays. They did not wear arm bands at that time.

The question which now must be determined is whether the action of officials of the defendant school district forbidding the wearing of arm bands on school facilities deprived the plaintiffs of constitutional rights secured by the freedom of speech clause of the first amendment. An individual's right of free speech is protected against state infringement by the due process clause of the fourteenth amendment. *Gitlow* v. *New York*, 268 U.S. 652 (1925). The wearing of an arm band for the purpose of expressing certain views is a symbolic act and falls within the protection of the first amendment's free speech clause. *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624

[1] Plaintiff John F. Tinker, age 15, attended North High; plaintiff Mary Beth Tinker, age 13, attended Warren Harding Junior High; plaintiff Christopher Eckhardt, age 15, attended Roosevelt High; Paul and Hope Tinker, age 8 and 11 respectively, younger brother and sister of plaintiffs John and Mary Beth Tinker also wore arm bands to their respective schools.

(1943); *Stromberg* v. *California,* 283 U.S. 359 (1931). However, the protections of that clause are not absolute. See, e.g., *Dennis* v. *United States,* 341 U.S. 494, 503 (1951); *Near* v. *Minnesota,* 283 U.S. 697 (1931); *Pocket Books, Inc.* v. *Walsh,* 204 F.Supp. 297 (D. Conn. 1962). The abridgement of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgement of speech that actually occurs. "In each case (courts) must ask whether the gravity of the 'evil' discounted by its improbability justifies such invasion of free speech as is necessary to avoid the danger. *Dennis* v. *United States,* 183 F.2d 201, 212 (2d Cir. 1950).

Officials of the defendant school district have the responsibility for maintaining a scholarly, disciplined atmosphere within the classroom. These officials not only have a right, they have an obligation to prevent anything which might be disruptive of such an atmosphere. Unless the actions of school officials in this connection are unreasonable, the Courts should not interfere.

The Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D.C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in

support of the rule prohibiting the wearing of arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation.

A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classsroom. The avowed purpose of the plaintiffs in this instance was to express their views on a controversial subject by wearing black arm bands in the schools. While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance. The school officials involved had a reasonable basis for adopting the arm band regulation.

On the other hand, the plaintiff's freedom of speech is infringed upon only to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Viet Nam war during any orderly discussion of that subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to the protection of the law.

Plaintiffs cite two recent opinions from the Court of Appeals for the Fifth Circuit in support of their position. *Burnside* v. *Byars,* Civil No. 22681, 5th Cir., July 21, 1966; *Blackwell* v. *Byars,* Civil No. 22712, 5th Cir., July 21, 1966.

These cases involved the wearing of "freedom buttons" in Mississippi schools. In holding in one of the cases that the school regulation prohibiting the wearing of such buttons was not reasonable, the Court states that school officials "cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." *Burnside* v. *Byars,* supra, at 9. While the decisions of the Court of Appeals for the Fifth Circuit are entitled to respect and should not be brushed aside lightly, they are not binding upon this Court. *John Deere Co.* v. *Graham,* 333 F.2d 529 (8th Cir. 1964). After due consideration, it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech.

The plaintiffs' request for an injunction and nominal damages are denied. Judgment will be entered accordingly.

Dated this 1st day of September, 1966.

District Court Judgment

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

TINKER, *et al.*,

Plaintiffs,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *et al.*,

Defendants.

On September 1, 1966, the following Judgment Entry was made:

Pursuant to memorandum opinion filed this date, which pursuant to Rule 52(a) constitutes this Court's findings of fact and conclusions of law.

IT IS ORDERED AND ADJUDGED that plaintiff's complaint is dismissed at plaintiff's cost.

Dated this 1st day of September, 1966.

/s/ ROY L. STEPHENSON
Chief Judge

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1034

JOHN F. TINKER, et al.,

Petitioners,

vs.

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, et al.,

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI

Respondents pray that this United States Supreme Court not issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled case on November 3, 1967.

STATUTE INVOLVED

Under the heading "Statute Involved" petitioners quote Section 282.4, Code of Iowa, 1966.

The instant case was actually brought pursuant to the provisions of 42 U.S.C., Section 1983, which reads:

> "Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. Sec. 1979."

PETITIONERS' STATEMENT OF QUESTION

Respondents believe petitioners' statement of question presented is incorrect in that it assumes that if the challenged rule had not been adopted and enforced then there would have been no interference at all with the education process and assumes that the school rules which in any manner limit the right of free speech or expression must be reviewed in the light of what did happen, after the enforcement was successful, or in the light of what the court now believes would have happened had the rule not been promulgated and enforced. Respondents submit that secondary school authorities are surely not obliged to let events take their course before adopting rules and regulations.

Christopher Eckhardt, plaintiff, arrived in school wearing a black arm band for the express purpose of challenging the rule. He was promptly sent home when he refused to take it off. (R. 26-28.) Plaintiff John Tinker wore his arm band for a part of a morning session. The first class after lunch he was sent home. (R. 13-15.) Plaintiff Mary Elizabeth Tinker wore her arm band to Warren Harding Junior High School and was sent home during the first class after lunch. The plaintiffs demonstrated to promote

their own point of view. They sought attention and welcomed questions. (R. 19.) Obviously, if their purposes were achieved they would have of necessity interfered with the management and operation of the schools and with the discipline and decorum thereof. The regulation was pronounced in advance and made known to all students prior to the time the plaintiffs or any other students wore them. (R. 10.) It is a fair inference that many more students would have worn them had not the regulation been made known to them. Surely it cannot be assumed that had the regulation not been promulgated and enforced that there would have been no disruption of the discipline and decorum of the various schools involved

STATEMENT OF THE CASE

At all times material, the plaintiff, John Tinker was fifteen years of age and a student in North High School, Des Moines, Iowa. His sister, Mary Beth Tinker, was thirteen years of age, and was a student in Warren Harding Junior High School, Des Moines, Iowa. The other minor plaintiff, Christopher Eckhardt, was sixteen years of age and a student at Roosevelt High School in Des Moines, Iowa, all of said schools being within the Des Moines Independent Community School District.

The three students, by their next friend, brought this action, claiming that they were deprived of their right of free speech in violation of the First and Fourteenth Amendments to the Constitution of the United States. Their action is based on 42 U.S.C., Section 1983.

The defendants are the Des Moines Independent Community School District and the individual members of the Board of Directors thereof, together with the superintendent of schools and other teachers and administrative offi-

cials of the Des Moines Independent Community School District. The plaintiffs sought injunctive relief and nominal damages against all defendants. (R. 7.) The plaintiffs were each suspended from school because they wore black arm bands in violation of a school regulation. (R. 10.) The case was tried in the United States District Court for the Southern District of Iowa, the Honorable Roy L. Stephenson presiding, and the court held among other things:

> "The school officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech." (R. 45.)

The Circuit Court affirmed without opinion. (Petitioners' Petition 9a.)

The events leading up to the adoption of the regulation in question were as follows:

On Saturday, December 11, 1965, a meeting was held at the home of William Eckhardt, father of plaintiff, Christopher Eckhardt. The meeting was attended by college students and adults. Some of the students were members of the Students for Democratic Society (S.D.S.) and many of the people attending had previously participated in a peace march in Washington, D. C., protesting the war in Viet Nam. (S.R. 10-11.) None of the plaintiffs actually attended this meeting at the Eckhardt home, but both Mr. and Mrs. Eckhardt and Mrs. Tinker attended. (R. 11, 12, 29, S.R. 10-11.) Plaintiff Christopher Eckhardt and his mother had participated in the Washington demonstration. (R. 26, 29.)

This initial meeting was also attended by Bruce Clark and Ross Peterson (R. 30), both of whom were students at Roosevelt High School and both of whom were actively involved in the arm band situation although not plaintiffs in this case. (R. 11, 20, 27, 30) (Plaintiffs' Ex. 4; R. 36, S.R. 25-28.) One of the proposals at the December 11, 1965 meeting was that students and others wear black arm bands to support the truce by Senator Kennedy and to mourn the deaths in Viet Nam.

Thereafter, there was a December 12th meeting, also at the Eckhardt home, attended by Christopher Eckhardt, Bruce Clark, Ross Peterson, and others, when the wearing of the arm bands was again discussed. (R. 30.)

The national news media indicated the arm bands' original intent was in protest of the United States Government policy. The matter of wearing arm bands was in the national news media at this time and on Monday, December 13th, Ross Peterson, a student at Roosevelt High School approached his journalism teacher about writing an article for the school paper relating to Viet Nam. The matter was deferred and discussed with other administrative officials, and on December 14th a meeting of the principals of the Des Moines School System was called by Mr. Peterson, the director of secondary education. It was decided that the wearing of the arm bands would be prohibited and it was thereafter that the regulation was announced to the students. (Plaintiffs' Ex. 4, R. 37, S.R. 25-28.). This plaintiffs' Exhibit 4 is a written report from the Director of Secondary Education to the Superintendent of Schools outlining the events in some detail and listing a number of the reasons considered by the principals in adopting the regulation. Out of a total of approximately 18,000 high school and junior high school students only

five were suspended for wearing black arm bands contrary to the regulation. They include the three plaintiffs and two other Roosevelt High School Students. (R. 36, Plaintiffs' Ex. 4, R. 37, S.R. 25-28.)

On the morning of Thursday, December 15th, plaintiff Christopher Eckhardt appeared at the Roosevelt High School wearing an arm band. After taking his coat off at his locker, he went directly to the principal's office, because he knew that he was in violation of the rule. On the way he talked with one student, who asked him about it, and he told him why he was wearing it, and also told him that he knew he was in violation of the rule. On arrival at the principal's office he was asked by Mr. Blackman, the vice-principal, to remove the arm band, he refused and was suspended. (R. 26-28.) He testified that he wore the black arm band to school as a matter of protest of the war in Viet Nam and to hope for a Christmas truce, and that he hoped to influence public opinion toward his views. (R. 29-30.)

Plaintiff Mary Elizabeth Tinker, age 13, attended Warren Harding Junior High School on Thursday morning, December 16th, wearing a black arm band. A number of students during the morning, in class and between classes, asked her about it and there was some conversation, and she had one girl sign a petition. The first class after lunch she was sent to the principal's office, removed the arm band on request, but later was sent home, and her parents were asked to return for consultation with the officials. (R. 21-24.) On the same day that she wore the arm band, her brother Paul, who was eight, and her sister Hope, who was eleven, also went to school wearing arm bands. (R. 16-24.)

The plaintiff John Tinker, a student at North High School, did not wear an arm band until Friday, December

17th. (R. 12.) There was conversation in the halls and classrooms with other students, some of which was friendly and some of which was not. (R. 13-14.) At lunchtime some of the students made uncomplimentary remarks for about ten minutes. Four or five of them were standing milling around. He testified that there were no threats to him or anything, and that finally a football player told the kids to leave him alone, that everyone had their own opinion. (R. 13-14.) Some of the students at the lunchroom referred to him as "Commie" and other things of that nature. (R. 19.) When he went to his first class after lunch he was sent to the principal's office, and when he refused to take off the arm band he was sent home. (R. 15.)

John Tinker testified, "I didn't anticipate the rule would forbid me from wearing the arm band outside of school, I was concerned about being able to wear it to school, because I didn't see anything wrong about it. I didn't think it was all that bad. In fact, I thought it was kind of good, that's why I was going to wear it. I wanted to wear it as many days in school as I could." (R. 17.) He further testified, "I suppose I was attracting some attention by wearing the arm band. I wanted students and everybody else that saw it to know I was wearing it, and I welcomed questions at school while I was wearing it. My parents and I are generally against the policy of the government in Viet Nam. By wearing the arm band I suppose I would have hoped to influence public opinion about the matter of Viet Nam, to call attention to it; to influence people to believe as I did about it." (R. 18.)

The Board of Directors deferred action at the December 21, 1965 meeting for the purpose of obtaining advice of counsel and making further investigation. Further investigation was made and advice obtained and on the first

Monday of January, 1966, the Board voted to uphold the administrative policy set by the school officials. (S.R. 9.) Ora Niffenegger, who was then President of the School Board of the Des Moines Independent Community School District, testified that at the January meeting, "Our board-room was filled to overflowing. There were a few signs present, and on several occasions it was a little bit touch and go as far as maintaining order, but we did get through." In other words, there were some demonstrations from people locally, and apparently from outside the city. (R. 38.) Leonard Tinker, father of plaintiff John Tinker, stated in his deposition:

> "I was present at the meeting of the School Board following that, the 21st. I would not question the newspaper accounts that there were about two hundred students and adults that attended the meeting. Professor Sawyer was not employed, he happened to be at the meeting because he was secured. He agreed to serve as a spokesman for the group. The papers state there was a picket line formed outside the board office. I don't question that." (S.R. 15.)

QUESTION PRESENTED

Whether the school regulations forbidding students to wear arm bands in school in support of their beliefs concerning the war in Viet Nam was so unreasonable and arbitrary in the light of the facts existing as to be a violation of the students' right of free speech and expression granted to them under the First and Fourteenth Amendments to the Constitution.

REASONS FOR NOT GRANTING THE WRIT

Petitioners' contention that the Eighth Circuit's decision in the instant case is in conflict with the prior case of *Burnside* v. *Byars*, 363 F.2d 744, 5th Cir. 1966, is unfounded.

There is no real conflict between the two cases. In each case, the court recognizes the right of the school authorities to enforce reasonable regulations. In *Burnside*, supra, on page 748, the court said:

> "Therefore, a reasonable regulation is one which measurably contributes to the maintenance of order and decorum within the education system."

In *Burnside*, supra, the high school students in an all negro high school in Philadelphia, Mississippi, were wearing Freedom Buttons saying, "One man, One vote". There was nothing potentially disruptive or inflammatory about this in the light of the facts appearing in the record in the case. Therefore, the Fifth Circuit held that the regulation was not reasonable. The record in that case disclosed that large numbers of students wore the buttons even after the regulation forbidding them had been announced, but that it did not cause any serious disruption of the decorum or the discipline of the school. This, of course, served to buttress their judgment that the regulation was not in fact reasonable, and this was the basis on which the same circuit distinguished the case of *Blackwell, et al.* v. *Issaquena Bd. of Education, et al.*, 363 F.2d 749, Fifth Cir. 1966, which case was decided simultaneously with the case of *Burnside* v. *Byars*, supra. In short, in the case of *Burnside* v. *Byars*, supra, the Fifth Circuit held that under the facts and circumstances of that case the regulation was not reasonable in that the act which it forbade would not disrupt the discipline in the school. Their view of the matter was supported by the subsequent events.

In the instant case, the rule against wearing the black arm bands was promulgated under entirely different circumstances, which were well expressed by the trial court in its opinion as follows:

"The Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D. C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court Both individuals supporting the war and those opposing it were quite vocal in expressing their views. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in support of the rule prohibiting the wearing of the arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation." (R. 43.)

The instant case and *Burnside*, supra, were both decided in the light of the circumstances then existing. Respondents submit that it can not be assumed that the Fifth Circuit, given the exact facts and circumstances that existed in the instant case, would have decided it any differently than did the Eighth Circuit. In short, there is no conflict between the two circuits which would justify the granting of the Writ of Certiorari in this case.

If the Fifth Circuit decision in *Burnside*, supra, must be construed to hold that school authorities may not exercise reasonable judgment in the light of surrounding circumstances in promulgating a rule, even though it may to some extent limit the right of speech and expression, but must wait until school discipline and decorum has been disrupted before attempting to take any kind of action at all, then it is in conflict with the Eighth Circuit decision in this case, but it is surely clearly in error.

The instant case does not conflict with prior applicable decisions of the United States Supreme Court. The law

in Iowa and elsewhere gives school authorities the right to adopt reasonable rules and regulations governing the conduct of the pupils. If the regulation is reasonable in the light of existing facts and circumstances the Court may not question the discretion vested in the school authorities. It is not for the courts to consider whether the rule in retrospect was wise or expedient so long as it was a reasonable exercise of the discretion vested in the school authorities. *The Board of Directors of the Independent School District of Waterloo, Iowa* v. *Ronald Green,* 147 N.W.2d 854; Iowa, 1967; *Kinzer* v. *Independent School District,* 129 Iowa 441, 105 N.W. 686; *Pugsley* v. *Sellmeyer, et al.,* 158 Ark. 247, 257 S.W. 538; *Stromberg* v. *French,* 236 N.W. 477 (N. Dak.); *Burnside* v. *Byars,* 363 F.2d 744 (5th Cir. 1966); *Blackwell* v. *Issaquena County Board of Education,* 363 F.2d 749 (5th Cir. 1966).

In *Green,* supra, on page 858, the Iowa Supreme Court said:

> "The courts of this state are not concerned with the wisdom of discretionary acts on the part of school boards in adopting rules and regulations governing the operation, management and conduct of our schools.
>
> "Stated otherwise it is not for us to concern ourselves with the matter of expediency of a given board rule. The duty of all courts, regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management progress, and efficient operation of our public school system. It would in effect serve to place operational policies of our schools in the hands of the courts which would be clearly wrong if not unconstitutional."

Even the Fifth Circuit in the case of *Burnside* v. *Byars,* 363 F.2d 744, relied on by petitioners,

> "In formulating regulations, including those pertaining to the discipline of school children, school officials have a wide latitude of discretion. But the school is always bound by the requirement that the rules and regulations must be reasonable. It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities."

It is universally recognized that in operating a public secondary school system the absolute right to speak or demonstrate, which would be perfectly valid at another time and at another place, cannot be tolerated in the school system. No doubt, some school systems permit the exercise of free speech under circumstances that another school system, in the exercise of a reasonable discretion, forbids. Surely, the school authorities must have some leeway. In the instant case, the students were not wearing the arm bands for the purpose of a quiet affirmation of their beliefs and principles. They were wearing them for the avowed purpose of calling attention to their beliefs.

In *Pugsley* v. *Sellmeyer,* 158 Ark. 247, 257 S.W. 538, the plaintiff was suspended from school for violating a school rule forbidding the use of face paint or cosmetics. She brought mandamus to require her admission to school notwithstanding her refusal to obey the rule. The Supreme Court of Arkansas affirmed the lower court's decision denying the writ, and the court stated:

> "The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment, unless there is a clear abuse of the discretion or a violation of the law. . . . The Question, therefore, is not whether we approve this rule as one we would have made as directors of the district, nor are we required to know whether it was essential to the maintenance of discipline. On the contrary, we must uphold the rule unless we find that

> the directors have clearly abused their discretion and the rule is not one reasonably calculated to effect the purpose intended of promoting discipline in the schools."

The conduct of pupils which directly relates to and affects management of the school and its efficiency is a matter within the sphere of regulation by school authorities and if the regulation is reasonable in the light of existing circumstances then it should be allowed to stand. The fact that it may in some degree limit the right of free expression on the part of some students does not require or permit the courts to apply some different ruling.

The right of free speech or freedom of expression (including the right to demonstrate) is not an absolute right, but must be weighed against the other legitimate government and public interests. In the case at bar, the other legitimate interests are the right and duty of the school authorities to maintain order in the school, and to operate the schools efficiently according to an established curriculum.

The balancing of the interests rule has been applied under many different facts and circumstances. In *American Communications Associations* v. *Douds*, 339 U.S. 382, 70 S.Ct. 674 (1950), the United States Supreme Court upheld the provisions of the N.L.R.B. Act, which required that officials of labor unions file an affidavit that they were not members of the communist party. Justice Vinson, in his opinion, stated:

> "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."

In *Cox* v. *New Hampshire*, 312 U.S. 569, 61 S.Ct. 772 (1941), the United States Supreme Court upheld a New Hampshire conviction of Jehovah's Witnesses, who were convicted for violating a state statute prohibiting a parade or procession upon a public street without a special license. The Jehovah's Witnesses contended that the statute was an invalid infringement upon their First and Fourteenth Amendment rights of free speech, press, religion, and assembly. Upholding their conviction, the Supreme Court said:

> "Civil liberties as guaranteed by the Constitution imply the existence of an organized society, maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

The proposition that people have a constitutional right to express their views by way of demonstration or otherwise, however and wherever they please was rejected in the *Cox* case, supra, and again rejected in the very recent case of *Adderley* v. *The State of Florida*, 87 S.Ct. 242 (1966). In the Adderley case, the petitioners and other persons were convicted of trespass under a Florida statute. They congregated and demonstrated on State property in front of the county jail. Justice Black, who delivered the opinion of the Court said:

> "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this 'area chosen for peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate * * *'. Such an argument has as its major unarticulated premises the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and

however and wherever they please. That concept of constitutional law was vigorously and forthrightfully rejected in two of the cases petitioners rely on *Cox* v. *State of Louisiana,* supra, at 545-555 and 563-564, 85 S.Ct. at 464 and 480. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose."

In *Konigsberg* v. *State Bar of California,* 366 U.S. 36, 81 S.Ct. 997 (1961), Konigsberg refused to answer questions asked by the Bar Committee of the State of California relative to his qualifications. The Bar Committee refused to certify him on the grounds that his refusal to answer had obstructed a full investigation into his qualifications. The Supreme Court held that it was a valid governmental purpose to require proof of good moral character and that the Bar Association could require him to respond to the questions put to him without violation of the First and Fourteenth Amendments to the United States Constitution. While this case involves the right not to speak, the application of the balancing test is relevant to the case at bar. It is further relevant in that it involves action taken by a nonlegislative body. Beginning on page 50 of 366 U.S. and page 1006 of 81 S.Ct. Rep., Justice Harlan speaking for the Court said:

"At the outset we reject the view that freedom of speech and association (N.A.A.C.P. v. State of Alabama ex rel. Patterson, 357 U.S. 449, 460, 78 S.Ct. 1163, 1170, 2 L.Ed. 1488) as protected by the First and Fourteenth Amendments, are 'absolutes' not only in the undoubted sense that where the constitutional protection exists it must prevail, but also in the sense that the scope of that protection must be gathered solely from a literal reading of the First Amendment. Throughout its history this Court has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an un-

limited license to talk. On the one hand, certain forms of speech, or speech in certain contexts, has been considered outside the scope of constitutional protection (Citing cases . . .). *On the other hand, general regulatory statutes, not intended to control the content of speech, but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved.*" (Emphasis supplied.)

The fact that the subject matter of the proposed demonstration is deemed a matter of vital importance is not the criterion. Surely secondary school authorities have a right and a duty to maintain an established curriculum unimpaired by the desire of some students to promote a discussion and to attract attention concerning certain other subjects.

Petitioners throughout their petition assume that had the school authorities permitted all students to demonstrate by wearing arm bands in opposition to the war in Viet Nam that there would have been no disturbance of the education process. Under their theory the only way school authorities could ever justify any rule or regulation which in any manner limited free speech would be to wait until the education process had in fact been interrupted and then promulgate the rule.

Respondents respectfully submit that school authorities operating secondary schools have a right to exercise their own judgment and discretion in promulgating rules, including those which in some degree limit the students' right of free speech and free expression, and that the courts should not "second guess" the administrators, so

long as the regulation appeared to be reasonable under the facts and circumstances existing at the time it was adopted. Surely the fact that out of 18,000 students (R. 36), it was only necessary to suspend five students for violating the rule (S.R. 28), is a strong indication that most students viewed the rule as reasonable and proper.

Students in secondary school systems cannot be allowed to demonstrate at any and all times for or against a proposition no matter how earnestly they believe in the importance of the subject matter and the correctness of their beliefs. Concedely, the subject matter of the demonstration and the views of those seeking to demonstrate are not controlling, but it is important that school administrators and officials have a right to, in good faith, adopt rules and regulations to meet the day to day situations arising and which they have reasonable grounds to believe are necessary in order to prevent interference with the education process. As stated by the trial court, the fact that the subject matter is controversial does not in and of itself justify excluding it from the classroom, but surely the school authorities must have the right to control the curriculum and control the time and place for discussion.

Petitioners recognize that the secondary school authorities do have the right to limit the absolute right of free speech and expression when it disrupts the "education process," but it would appear that in essence they believe that this court should substitute its discretion for that of the school authorities. Respondents respectfully submit that it is for the courts to decide whether there was a reasonable basis for the rule when it was promulgated and this should not be based on what the individual members of the court might have done had they been acting as school authorities at the particular time and place.

The instant case cannot be compared to freedom of religion cases such as *West Virginia* v. *Barnette*, 319 U.S. 624 (1943), *School District* v. *Schempp*, 374 U.S. 203 (1963), and *Engel* v. *Vitale*, 370 U.S. 421 (1962), all cited by petitioners. The wearing of the black arm bands had no religious significance whatsoever. They were seeking to demonstrate in order to influence others to believe as they did relative to the war in Viet Nam. (R. 29-30, 18.) The record clearly reflects that neither petitioners nor their parents were strangers to this form of persuasion. On the contrary, the record clearly reflects that they, together with their parents, had demonstrated on a number of other occasions. (R. 12, 17, 26.) They were seeking to use the public schools, with a captive audience, as a place to promote their own beliefs. Respondents respectfully submit that the First and Fourteenth Amendments to the United States Constitution do not require school authorities to permit this kind of activity among the student body when, as in this case, there is a reasonable likelihood that it will disrupt the education process.

Petitioners suggest that the claimed conflict by the Fifth and Eighth Circuits involved a basic difference in the philosophy concerning the operation of the public schools. Respondents respectfully submit that the public schools involved in this case were created by and controlled by the State of Iowa, acting through the duly constituted school authorities. The proper role of the public schools is not something for the Supreme Court to decide. Unless there is a clear violation of the basic Federal Constitutional rights, it would seem clear that the Federal Courts should not interfere.

Some limitations on the absolute right of expression occurs daily in a public school and not even petitioners suggest that all of these limitations violate the people's

First Amendment rights. The record in this case reflects that there was no abuse of the discretion vested in the school authorities and thus no violation of the petitioners' constitutional rights.

CONCLUSION

Certiorari should not be granted in this case because A. There is no clear conflict between the decisions of the Eighth Circuit and any other circuit court of the United States; B. In any event the decisions of the trial court and the Eighth Circuit in this case are not contrary to the applicable decisions of this court.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. [redacted] 21

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Petitioners,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS and ELLSWORTH E. LORY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1034

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Petitioners,

—v.—

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS and ELLSWORTH E. LOBY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONERS

Opinions Below

The opinion of the Court of Appeals (A. 77) is reported at 383 F. 2d 988. The opinion of the United States District Court for the Southern District of Iowa, Central Division (A. 71) is reported at 258 F. Supp. 971.

Jurisdiction

The judgment of the United States Court of Appeals for the Eighth Circuit, *en banc*, was entered on November 3, 1967. It affirmed by an equally divided court the judgment of the United States District Court for the Southern District of Iowa, Central Division, which dismissed a complaint brought by petitioners under Section 1983 of Title 42 of the United States Code. Petition for a writ of certiorari was filed on January 17, 1968. The writ was granted on March 4, 1968. The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Question Presented

Whether petitioners' rights under the First and Fourteenth Amendments were violated by their suspension from public schools for violating an order by the principals of those schools which absolutely prohibited them from wearing black arm bands in school as a means of protesting the Vietnam War.

Statement

Shortly before Christmas in 1965, some high school and college students in the area of Des Moines, Iowa decided to publicize their objection to the killing in Vietnam by wearing black arm bands during the holiday season and by fasting on December 16 and New Year's Day. The students intended, through this form of expression, to mourn the dead in Vietnam, and to express their hope that a Christmas truce in the war would be extended indefinitely, as

proposed by Senator Robert F. Kennedy (A. 15, 22-24, 35, 53-54, 64-65).

Petitioners, all of whom were students duly enrolled in the public schools of Des Moines, Iowa,[1] heard about these plans and they decided to express their personal concern about the war by joining in the fasting, and by wearing arm bands to their schools (A. 15-16, 20-24, 30, 36, 55).

This decision by petitioners reflected the religious, ethical and moral environment in which they were raised and was a natural outgrowth of their religious and moral training. Petitioners John and Mary Beth Tinker and their families have been active in the American Friends Service Committee, and their father is a Methodist minister who served as the "Peace Education Secretary" of the A. F. S. C. in Des Moines (A. 15, 25, 30, 37, 51-52). Petitioner Eckhardt is active in youth activities of the First Unitarian Church (A. 30). Petitioners John and Mary Beth Tinker referred to their protest as an act of "witness" (A. 15, 24).

The students' intention to wear arm bands came to the attention of the school authorities and on December 14, 1965, E. Raymond Peterson, director of secondary education in the Des Moines Independent School District, called a meeting of the principals of the Des Moines schools to discuss an appropriate response. At this meeting, a policy prohibiting the wearing of arm bands in school was adopted by the principals, who decided that a student wearing an arm band to school would be asked to remove it, and that

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[1] Petitioner John F. Tinker was a 15 year old student in the eleventh grade of North High School; petitioner Mary Beth Tinker was a 13 year old student in the eighth grade of Warren Harding, Jr. High School; petitioner Christopher Eckhardt was a 16 year old student in the tenth grade at Roosevelt High School (A. 15, 24, 29-30).

if the student refused he would be suspended but allowed to return without the arm band (A. 45). According to Mr. Peterson, the principals felt that:

> ". . . 'For the good of the school system we don't think this should be permitted. The schools are no place for demonstrations. We allow for free discussion of these things in the classes. The policy was based on a general school policy against anything that was a disturbing situation within the school. The school officials believe that the educational program would be disturbed by stude s wearing arm bands' " (A. 46).

On December 16, 1965, petitioners Mary Beth Tinker and Christopher Eckhardt wore black arm bands in their schools, knowing that they were violating the aforementioned prohibition, which had been announced publicly by the principals and carried in the newspapers (A. 31, 65-66). These arm bands consisted of strips of black cloth, about one or one and a quarter inches in width and about eight or nine inches long (A. 25, 31). Miss Tinker wore her arm band ". . . hoping President Johnson would have a settlement with North Vietnam and a truce" (A. 24). Mr. Eckhardt wore his, ". . . as a matter of protest of the war in Vietnam, and to hope for a Christmas truce. That was the sole reason. I hoped in a small way to influence public opinion toward my views of the war in Vietnam" (A. 35-36).

Miss Tinker arrived at school at about 8 a.m., and wore the arm band throughout the morning, during lunch and into the afternoon without causing any disruption or disorder of any kind whatsoever (A. 25-26). After lunch, Miss

Tinker went to her math class, which was taught by Mr. Richard K. Moberly, a teacher who had previously expressed to the students his opposition to expression of political views in the classroom (A. 27, 29, 49-51).[2]

Although there was no disorder or threat of disorder, Mr. Moberly ordered Miss Tinker to go to the principal's office. At the office, Miss Tinker removed her arm band as she was requested to do, and returned to her class (A. 38-39). Nevertheless, Miss Vera Ann Tarmann, the girls' advisor at the school, entered the classroom shortly thereafter and asked Miss Tinker to accompany her to the office (A. 39-40). Miss Tarmann told Miss Tinker that she was compelled to suspend her from school, although she sympathized with Miss Tinker's opinions, being a descendant of Quakers herself. Miss Tinker thereupon left the school, taking with her a suspension notice (A. 27-28). Before she left, it was made clear to her that she could not return to school wearing an arm band (A. 40).

In light of the prohibition against wearing an arm band, of which he was aware, petitioner Christopher Eckhardt went directly to the office of the principal when he arrived

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[2] Mr. Moberly had told his students that ". . . if there was going to be a demonstration in my class, it would be for or against something in mathematics and if they wanted to demonstrate in my school, they better be demonstrating about something that was in my class" (A. 50). He also ". . . expressed my view on demonstrations that were against things and not for things." However, Mr. Moberly had observed students in his class wearing the Iron Cross ". . . that was used by or that commonly became associated with the government of the Third Reich when it was in power in Germany . . ." (A. 51). Such students were not dismissed from class because, according to Mr. Moberly, "That's not included in the policy involving the arm bands, so far as I know" (A. 51). Mr. Moberly had ". . . seen these Iron Crosses worn since the suspension of Mary Beth Tinker for wearing arm bands" (A. 51).

at school on the morning of December 16 (A. 30-31). He had a conversation there with Mr. Donald Blackman, vice-principal of the school, who asked petitioner to remove the arm band because, among other things, it was going to bring bad publicity to the school (A. 31-32).

Mr. Eckhardt also spoke to Mrs. Velma Cross, the girls' advisor at the school, who told him that wearing the arm band was "going to look bad on my record" and that "the colleges didn't accept demonstrators or protestors, and they told me this and asked me to remove my arm band . . ." (A. 32). Mrs. Cross also told petitioner that:

> ". . . she thought I was too young and immature to have too many views, and thought I ought to take the arm band off, and they let me know while I was going to be out of school that I could probably have plenty of time to look for a new school to go to and I told them I liked Roosevelt and I wanted to come back, and they said that if I did anything like this again that I wouldn't come back to Roosevelt" (A. 34).

In spite of these admonitions and threats, Mr. Eckhardt refused to remove his arm band, and he was sent home (A. 33).

After school, petitioners and other students who had been suspended from school for wearing arm bands, gathered at the home of Mr. and Mrs. Eckhardt to discuss the day's events (A. 16, 37).[3] During this discussion, some

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[3] Among the other students who wore arm bands to school were Paul and Hope Tinker, ages 8 and 11 respectively, the younger brother and sister of petitioners John and Mary Beth Tinker (A. 20-21, 28).

of the students telephoned Mr. Ora E. Niffenegger, an attorney who was President of the Board of Directors of the Des Moines school district, and requested that he convene a special meeting of the board. The students wanted a special meeting because "we thought if it was brought to the school board's attention, what had happened, I really thought that they would change their decision . . . [we] wanted to talk with the school board because [we] didn't want to defy authority and [we] didn't want to break any rules" (A. 21, 37).

Mr. Niffenegger told the students that he would not convene a special meeting, but that the matter might be taken up at the regular board meeting to be held the following week (A. 37). In refusing to call a special meeting, Mr. Niffenegger explained to the students that:

> ". . . I thought they were taking the wrong way out, that we had in this country of ours a well defined way in which to handle this matter and that it was that if they didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of public schools" (A. 49).

The following day, December 17, petitioner John F. Tinker went to school wearing a black arm band. The arm band was a strip of black cloth about two inches wide and he wore it on the sleeve of his jacket for part of the day and on his shirt for the remainder (A. 17). Mr. Tinker had not worn the arm band the previous day, as had his sister, because "I didn't feel that I should just wear it against the will of the principals of the high schools without even trying to talk to them first" (A. 16). When Mr. Niffenegger

would not meet with the students, however, Mr. Tinker decided to wear the band (A. 22).

During the day, some of the students made unfriendly remarks to Mr. Tinker about the arm band, but these remarks were not threatening and they did not bother him. Moreover, at no time during the day was there any disorder or disruption of normal school activities (A. 18, 23).

After lunch, Mr. Tinker went to his English class. Although nothing out of the ordinary occurred there, the teacher told him to go to the principal's office. Mr. Tinker was told by the principal that he would not be permitted to wear the arm band, upon "orders from higher up" (A. 15). When petitioner refused to remove the arm band the principal dismissed him from school, telling him that he could return only when he took the arm band off (A. 19, 42). The principal also told Mr. Tinker that:

> "... I personally felt that there were appropriate times for us to mourn our war dead, including this event and Memorial Day, and it did not seem appropriate or necessary to me to mourn them as he was doing at this time. I told him that I was a Veteran of World War II and the Korean War" (A. 42).

On December 21, 1965, the school board conducted its regular meeting, but decided to defer a decision concerning the suspension of petitioners and the other students until it could obtain legal advice and make a further investigation (A. 47-48).

The board met again the first Monday in January, 1966, and a majority voted to uphold the policy prohibiting the wearing of arm bands (A. 48). Thereafter, on January 4 or

5, 1966, the petitioners returned to school without their arm bands (A. 19, 28, 34, 38).

On March 14, 1966, petitioners, through their fathers, filed a complaint in the United States District Court for the Southern District of Iowa under Section 1983 of Title 42 of the United States Code. The complaint sought a permanent injunction restraining the defendants from suspending petitioners or otherwise disciplining them in such a manner as to deprive them of their rights to free speech under the United States Constitution, and restraining the defendants from interfering with their exercise of free speech. The complaint also sought nominal damages (A. 6-11).

After an evidentiary hearing, the District Court dismissed the complaint holding, in essence, that it was not unreasonable for the school officials to anticipate that the wearing of arm bands would cause some type of classroom disturbance, and that it was "reasonable" under such circumstances to adopt the prohibition against wearing arm bands (A. 71-75). The United States Court of Appeals for the Eighth Circuit, *en banc*, affirmed the judgment below, without opinion, by an evenly divided Court.

ARGUMENT

I.

The order prohibiting petitioners from wearing black arm bands in school as a symbol of protest against the Vietnam War was an unconstitutional infringement of their rights under the First and Fourteenth Amendments.

A. *The First Amendment Protects the Rights of Public School Students to Free Speech in Their Schools and Classrooms*

This Court has repeatedly held that the constitutional rights of students are protected against infringement by state and school authorities. In a series of cases dating back almost half a century, the Court has recognized that although the State may compel its children to attend school and may, within limits, regulate the conditions under which their education takes place, it may not interfere with the individual rights of students in the guise of providing an education for them.

In the first of these cases, *Meyer* v. *Nebraska*, 262 U. S. 390 (1923), the Court held that the State of Nebraska could not constitutionally prohibit the teaching of modern foreign languages to young students, because such a prohibition unconstitutionally interfered with the right of parents to provide for the education of their children. Two years later, in *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), the Court held that the State of Oregon could not prohibit its citizens from sending their children to private or parochial schools merely because the State had the power to provide for compulsory education and to estab-

lish certain minimal educational standards. Such a prohibition, it was held, unduly interfered with the right of the students to develop their individual capacities. As the Court stated:

> "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 U. S. at 534.

Two decades later, in *West Virginia* v. *Barnette,* 319 U. S. 624 (1943), the Court held that, under the First Amendment, public school students could not be compelled to salute the United States flag as a means of promoting national unity and patriotism during the Second World War. In striking down the flag salute requirement, the Court expressly recognized that the protections of the First Amendment are fully applicable to public school students, and that their First Amendment rights cannot be infringed even for so lofty a purpose as the promotion of national unity in a time of war. As Mr. Justice Jackson wrote:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights.

> That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." 319 U. S. at 637.

Barnette involved the power of the State to compel students to take part in a patriotic ceremony to which they were conscientiously opposed. The instant case involves the power of the State to prohibit students from expressing their views in school. The guiding principle is the same—the State does not have the power to impose uniformity of thought, action and belief among its students by suppressing expressions of dissent.

Behind all these decisions lies the philosophy that social and political differences among students, and individual rights of students, may not be smothered or suppressed by school authorities for the purpose of promoting unity, discipline or order. Although school authorities must regulate conduct which obstructs the achievement of legitimate educational goals, they are limited by the precepts of the First Amendment and must recognize that the "Bill of Rights is [not] for adults alone". *In Re Gault,* 387 U. S. 1, 13 (1967).

Because the principle of free speech, as embodied in the First Amendment, will not be recognized by our citizens as fundamental to our society unless that principle is a living reality during their formative school years, the Courts have recognized that school authorities not only are forbidden to adopt regulations which infringe upon the First Amendment right of students, but that schools

should be treated as models of our democratic society. The rights of free speech and free expression which are to be encouraged in the adult democratic society must affirmatively be fostered in the school system. See, e.g., *West Virginia* v. *Barnette, supra; Burnside* v. *Byars,* 363 F. 2d 744 (5th Cir. 1966); *Dickey* v. *Alabama Board of Education,* 273 F. Supp. 613 (M. D. Ala. 1967); *Hammond* v. *South Carolina State College,* 272 F. Supp. 947 (D. S. C. 1967); cf. *Sweezy* v. *New Hampshire,* 354 U. S. 234 (1957). As the Court said in *Keyishian* v. *Board of Regents,* 385 U. S. 589, 603 (1967):

> "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. 'The vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools.' *Shelton* v. *Tucker,* 234 U. S. 479, 487. The classroom is peculiarly the 'market-place of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection' . . . ."

B. *The Prohibition Against Wearing Arm Bands Was an Unconstitutional Prior Restraint on Free Speech*

Wearing black arm bands to protest the war in Vietnam is a form of peaceful, symbolic expression protected by the First Amendment. As this Court recently said of First Amendment rights:

> "... these rights are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be ..." *Brown* v. *Louisiana*, 383 U. S. 131, 142 (1966).

See also, *Stromberg* v. *California*, 283 U. S. 359 (1931); *Thornhill* v. *Alabama*, 310 U. S. 88 (1940).

The form of expression chosen by petitioners was dignified, orderly, and peaceful. In no way was it intended to interfere with or obstruct the orderly and customary school routine. Nor did the form of expression conflict or interfere with the rights or activities of others. This kind of peaceful, silent, symbolic expression clearly is protected by the First Amendment. *West Virginia* v. *Barnette*, *supra*; cf. *Brown* v. *Louisiana*, *supra*; *Stromberg* v. *California*, *supra*.

The prohibition against wearing arm bands was adopted by the school principals in Des Moines at a meeting which was called after they learned of the students' intention to wear the arm bands. At the time the principals announced the prohibition, petitioners had not worn the arm bands to school, no disorder had taken place, and there was no threat of disorder.

The school authorities in Des Moines thus imposed a blanket prohibition against a particular form of expression which was peaceful and dignified, which was not designed to disrupt the schools, and which was not significantly different from types of expression which previously had been allowed in the classrooms of Des Moines. The prohibi-

tion (which was not written) was absolute in nature, made no provision for exceptions, and was to be applicable regardless of the circumstances in which the students attempted to wear the arm bands. In short, this was a broad, sweeping prior restraint on the peaceful exercise of First Amendment rights, of a type which has uniformly been held invalid by this Court. See *Near* v. *Minnesota,* 283 U. S. 697 (1931); *Hague* v. *CIO,* 307 U. S. 496 (1939); *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940); *Kunz* v. *New York,* 340 U. S. 290 (1951); *Niemotko* v. *Maryland,* 340 U. S. 272 (1951).

Mr. E. Raymond Peterson, director of secondary education in the Des Moines Independent School District, who called the meeting of the principals at which the prohibition was adopted, explained that the prohibition ". . . was based on a general school policy against anything that was a disturbing situation within the school. The school officials believed that the educational program would be disturbed by students wearing arm bands" (A. 66). When the principals made this judgment, they had no reason to believe that petitioners would wear the arm bands in such a manner as to deliberately provoke a disturbance or a breach of discipline. Nor does the record show any basis for a judgment that the arm bands could not have been worn by petitioners without inevitably causing a disturbance. Apparently, then, the principals held the mistaken view that they had the power to ban free speech by students arbitrarily and completely.

Though the principals initially gave no specific reasons for the ban, they met after petitioners were suspended and decided to adhere to the prohibition for a number of alleged reasons stated in a memorandum covering the meet-

ing (A. 68-71). Among those reasons were feared anger of friends of a former student who had been killed in the war, statements of other students that they might wear different colored arm bands to express their views, and the desire to protect students from exposure to the political views of a minority (A. 70). Even assuming these were the actual reasons which motivated the ban, they are either far "too remote and conjectural to override the guarantee of the First Amendment", *DeGregory* v. *Attorney General,* 383 U. S. 825, 830 (1967), or in the case of the school's desire to protect the students from exposure to the views of the minority, an impermissible consideration under the First Amendment.

II.

Petitioners Were Unlawfully Suspended From School for Exercising Their First Amendment Rights.

The record conclusively establishes that the wearing of arm bands by petitioners caused no disturbance or disruption of ordinary school activities and programs. Petitioner Eckhardt went directly to the principal's office when he arrived at school wearing an arm band. He was suspended immediately thereafter. Petitioners John and Mary Beth Tinker wore their arm bands during the day, but the record shows that they caused no disturbance or breach of discipline of any kind. Adverse comments were made by some students to Mr. Tinker concerning his views about the war, but such banter typically and routinely occurs in classrooms and halls without disrupting school.

Petitioners' actions were very much like those of students which were held to be constitutionally protected by this

Court in *Brown* v. *Louisiana,* 383 U. S. 131 (1966), and by the Fifth Circuit in *Burnside* v. *Byars;* 363 F. 2d 744 (5th Cir. 1966).

In *Brown* v. *Louisiana,* five young Negroes entered a public library in Clinton, Louisiana, and one of them requested a book. After a librarian told him she would order this book, the youths remained in the library to protest segregation of library facilities in the community. The children sat in the library silently and created no disturbance, but they were ejected ten or fifteen minutes later, arrested, and charged with breach of the peace.

This Court held under these circumstances that there was no evidence to support a violation by the children of the breach of peace statute. Speaking for the Court, Mr. Justice Fortas found that the youths were exercising rights protected by the First Amendment when they quietly protested against segregation in the library. Since their protest created no disturbance, the arrest of the youths violated their fundamental right of free speech.

Four members of this Court dissented in *Brown* v. *Louisiana,* and in an opinion by Mr. Justice Black, stated their opinion that the youths had no right to seek out a library as a forum for expressing their views.

Unlike the youths in *Brown* v. *Louisiana,* however, petitioners did not choose to express their views in a room devoted unequivocally to quiet and concentration. Rather, they sought to publicize their opinions in schools, which are particularly appropriate places for the lively discussion and expression of controversial views pertaining to public issues. Furthermore, petitioners were compelled to attend school, where the major portion of their time is spent and

where they are closely in contact with other students and teachers whose views they naturally would seek to influence.

In *Burnside* v. *Byars, supra,* the Court of Appeals for the Fifth Circuit upheld the right of public school students to express their views in school in a manner strikingly similar to that chosen by petitioners. In that case it came to the attention of the principal of a high school that a number of his students were wearing "freedom buttons" in school, whereupon the principal announced to the students that they would not be permitted to wear them. When a large number of students—30 or 40—persisted in wearing the buttons in violation of the principal's edict, they were suspended. Several of the students then instituted injunctive proceedings, to prevent the school officials from further enforcing the prohibition.

The school authorities contended that the regulation imposed by the principal was a "reasonable" means of maintaining proper discipline in the school, but the Court of Appeals concluded that the regulation was unconstitutional. While recognizing that rules and regulations must be formulated in order to maintain an orderly program of classroom learning, the Court pointed out that there had been no interference with educational activity because of the wearing of the buttons, nor was there any evidence that the buttons had distracted the students. Under these circumstances, the Court held, the order forbidding the wearing of "freedom buttons" on school grounds was an impermissible infringement of the students' protected right of free expression. The Court went on to say that:

> ". . . school officials cannot ignore expressions of feelings with which they do not wish to contend. They cannot infringe on their students' right to free and

> unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms does not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." 363 F. 2d at 749.

See also, *Sheldon* v. *Fannin*, 221 F. Supp. 766 (D. Arizona 1963), *appeal dismissed*, 372 U. S. 228 (1963).

Measured by the standard enunciated in *Burnside* v. *Byars*, the prohibition by the Des Moines school officials against wearing arm bands clearly is invalid. Wearing arm bands, like wearing freedom buttons, is a dignified, peaceful gesture, which does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."[4]

The District Court recognized that petitioners were exercising rights protected by the free speech clause of the First Amendment when they attended school wearing black arm bands in protest against the war. As the court stated, "The wearing of an arm band for the purpose of expressing certain views is a symbolic act and falls within the protection of the First Amendment's free speech clause" (A. 72). However, the Court expressly refused to apply the standard enunciated in *Burnside* v. *Byars* and upheld the prohibition by applying a standard of review which this Court has consistently held to be impermissible in

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[4] In *Burnside*, 30 or 40 children had worn buttons, and one of the teachers had to summon the principal because he felt that the students were causing a commotion. In this case, only a few students wore arm bands, and none of the teachers were compelled to take any form of disciplinary action, except to enforce the prohibition itself.

determining the constitutionality of limitations on the exercise of First Amendment rights.

As framed by the District Court, the question was whether it was "reasonable" for the "school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance" (A. 74), and whether the prohibition was a "reasonable" means of preventing such a disturbance.

Applying the test to petitioners, the District Court held:

> "After due consideration, it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech" (A. 75).

By applying a standard of "reasonableness", the District Court ignored decisions by this Court holding that the First Amendment does not permit the suppression of freedom of speech "on the basis of . . . notions of mere 'reasonableness'." *Dennis* v. *United States,* 341 U. S. 494, 580 (1952) (Black, J. dissenting).[5]

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[5] The District Court also adverted to the following test enunciated in *Dennis* v. *United States,* 183 F. 2d 201, 212 (2nd Cir. 1950):

As viewed by the District Court, the test in every case depends upon a judge's subjective view of the importance of free expression balanced against the importance of the conflicting interest asserted by the state. Every critical word used by the court involves a value judgment made without reference to a fixed standard: gravity of the evil, improbability, reasonableness. The test simply provides no uniform procedure to bind Courts to our Nation's commitment to free speech.

> "The full benefits [of a system of free expression] can only be realized when the individual knows the extent of his rights and has some assurance of protection in exercising them. Thus the governing principles of such a system need to be articulated with some precision and clarity. Doubt or uncertainty negates the process. Furthermore, the theory rests upon subordination of immediate interests in favor of long-term benefits. This can be achieved only through the application of principle, not by ad hoc resolution of individual cases. And it requires procedures adequate to relieve immediate pressures and facilitate objective consideration. All these elements a legal system is equipped to provide." Emerson, Toward a General Theory of the First Amendment, 72 Yale L. J. 877, 894 (1963).

Free speech, for students as for others, may not be subordinated solely upon speculation by the State that it will

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"The abridgment of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgment of speech that actually occurs. In each case [courts] must ask whether the gravity of the 'evil' discounted by its improbability justifies such invasion of free speech as is necessary to avoid the danger."

result in a grave evil. *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496, 516 (1939). There must be evidence of a "clear" or "imminent" danger arising directly out of the conduct of the demonstrators themselves. *Thornhill* v. *State of Alabama,* 310 U. S. 88, 104-105 (1940). The threat must be clear, present and immediate, as where members of a crowd, some agreeing and others disagreeing with a highly inflammatory speaker, have already threatened violence. *Feiner* v. *People of State of New York,* 340 U. S. 315 (1951); *Cantwell* v. *Connecticut,* 310 U. S. 296, 308 (1940); *Chaplinsky* v. *State of New Hampshire,* 315 U. S. 568, 572 (1942). While such standards may themselves be somewhat imprecise and leave room for subjectivity in their application to a particular case, they surely require a greater measure of evidence that a substantive evil is threatened than is present in the case at bar.

The District Court simply brushed aside the evidence showing that there was no interference with discipline and rested its decision upon certain alleged "facts" outside the record, to support the Court's conclusion that "it was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance" (A. 74).

Rather than focusing upon what actually happened in the schools, the Court asserted that debate concerning the Vietnam war had become vehement in the Des Moines community, that draft cards had been burned there in protest against the war, and that expressions of opinion concerning the war had become quite vocal and emotional (A. 73). In these circumstances, the District Court felt that:

> "While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom" (A. 74).

If the District Court meant that there was a reasonable likelihood of an overt disturbance from the "reactions and comments" of the other students, that finding has no basis in the record.[6] If the Court merely meant that "reactions and comments" by other students are by themselves reason to permit the prohibition against the arm bands, the answer is that the expression—verbal or symbolic—of opinion on matters of public importance should stimulate response. That is the function and purpose of free speech and the educational process.

Even if the reactions of the other students had been so overtly hostile to petitioners as to interfere with the educational process, it would have been the responsibility of the school authorities to discipline those who so reacted to the speech, rather than deny petitioners the right to express themselves. *Terminiello* v. *Chicago*, 337 U. S. 1 (1959); *Cooper* v. *Aaron*, 358 U. S. 1 (1958); *Feiner* v. *New York, supra; Hague* v. *C. I. O., supra*, at 516; *Ferrell* v. *Dallas Ind. School Dist.*, No. 24301 (5th Cir. March 29, 1968) (Tuttle, J., dissenting).

> "To cure the rights of free speech and assembly against 'abridgment' it is essential not to yield to threats of disorder. Otherwise, these rights * * * could be de-

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[6] In cases involving First Amendment rights, this Court will make an independent review of the record to determine the operable facts, *Cox* v. *Louisiana*, 379 U. S. 536 (1965).

stroyed by the action of a small minority of persons hostile to the speaker or the views he would be likely to express." *Sellers* v. *Johnson,* 163 F. 2d 877, 881 (8th Cir., 1947).

With the dramatic expansion of political awareness and activity by American students, both at the high school and college level, it is crucial that the right of students to express their political views peacefully and appropriately within the schools be firmly established, so that their respect for democratic values will not be thwarted. Unless this Court announces a constitutional standard which reinforces the rights of students to peacefully express their views in the schools, school officials presumably will continue to assume, as they did in this case, that they may suppress free speech by public school students as they see fit, without any consideration for the requirements of the First Amendment.

III.

The prohibition against wearing arm bands was specifically designed to impede petitioners in the exercise of their First Amendment rights.

Petitioners were suspended not for violating the respondents' general regulation regarding disruptive conduct (Def. Ex. 3; A. 67) but specifically for violating the arm band prohibition (A. 45). Thus they were subjected to a regulation directly suppressing speech, not one incidentally limiting speech while furthering an otherwise valid state interest. The case is therefore to be contrasted to the de-

cision in *United States* v. *O'Brien*, 36 U. S. L. Week 4469, 4473 (May 28, 1968):

> "The case at bar is therefore unlike one where the alleged governmental interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful. In *Stromberg* v. *California*, 283 U. S. 359 (1931), for example, this Court struck down a statutory phrase which punished people who expressed their 'opposition to organized government' by displaying 'any flag, badge, banner, or device.' Since the statute there was aimed at suppressing communication it could not be sustained as a regulation of noncommunicative conduct. See also, *NLRB* v. *Fruit & Vegetable Packers Union*, 377 U. S. 58, 79 (concurring opinion) (1964)."

The case is likewise dissimilar to *Adderley* v. *Florida*, 385 U. S. 39 (1966) where a narrowly drawn trespass statute had the incidental result of restricting a political demonstration; and to *Cox* v. *State of New Hampshire*, 312 U. S. 569 (1941), where members of a religious group were arrested for parading without a permit.

If discipline and decorum were the interests sought to be protected by prohibiting arm bands and suspending petitioners, Defendants' Exhibit Three was adequate to that task—if discipline and decorum were actually threatened. But it is clear that the arm band regulation sought to accomplish something more. One of its purposes was to forbid political demonstrations *per se*.[7] See *Hammond* v. *South*

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[7] In his testimony, the President of the school board, an attorney, stated, "I, also, when they told me the purpose of the meeting—they had explained to me—which was the opposition to the United

Carolina State College, 272 F. Supp. 947 (D. South Carolina, 1967). School officials seem also to have been concerned about publicity adverse to the schools which they felt would result from students wearing arm bands. See *Dickey* v. *Alabama Board of Education,* 273 F. Supp. 613 (M. D. Ala. 1967). It was, therefore, a prohibition addressed directly to a particular controversial statement of political opinion, not an even-handed regulation designed to control a valid state interest.

The discriminatory nature of the ban is shown by the fact that petitioners were neither the first nor the only students to wear political emblems, symbols and insignia in the classrooms of the Des Moines public schools. It is apparently commonplace for students in Des Moines to wear political and religious symbols in school, including, for example, presidential campaign buttons and similar items (A. 44, 50-51). Indeed, on more than one occasion, students have worn the "Iron Cross", a symbol associated with the Third Reich, without interference from the school authorities (A. 51). Thus, it is apparent that the school authorities in Des Moines have not adopted a uniform policy prohibiting the wearing of all political symbols regardless of their content.

The prohibition against wearing arm bands was adopted by the principals only after they learned of the students' intention to wear such arm bands in protest against the

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States policy in Viet Nam, I explained to them the best I could that I thought they were taking the wrong way out, that we had in this country of ours a well-defined way in which to handle this matter and that was if they didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools" (A. 49).

Vietnam war (A. 45-46). The meeting at which the principals promulgated the restriction took place before any students had actually worn arm bands to school, and in the absence of any indication that wearing them was intended to provoke a disturbance.

Since political insignia had been allowed in the school before, and there was no basis for a belief that arm bands would cause a disturbance, the prohibition must necessarily have been stimulated by hostility on the part of the school authorities towards the particular views or because of their controversial nature. Compare *Bond* v. *Floyd*, 385 U. S. 116 (1966); *Niemotko* v. *Maryland*, 340 U. S. 268, 272 (1951). By singling out petitioners from other students, and placing special limitations upon their expression of views, the school authorities struck at the very core of what the First Amendment protects—the expression of views which may be unpalatable to predominant public sentiment. Compare *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936). Such picking and choosing is "censorship in a most odious form". *Cox* v. *Louisiana*, 379 U. S. 536, 581 (1965) (Black, J., concurring).

Since the constitutional protections erected by the First Amendment do not turn upon "the truth, popularity, or social utility of the ideas and beliefs which are offered", *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 445 (1963), the petitioners were fully entitled to express their opposition to the war and to urge a truce, regardless of how controversial or unpopular such a view may then have been.

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IN THE

Supreme Court of the United States

No. [redacted] 21

JOHN F. TINKER, *Et Al.*, *Appellants*,

v.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *Et Al.*, *Appellees*.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

MOTION OF THE UNITED STATES NATIONAL STUDENT ASSOCIATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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CONCLUSION

For the reasons stated above, the judgment of the District Court, as affirmed by the Court of Appeals, should be reversed, with instructions to grant the relief requested by petitioners in the complaint.

Respectfully submitted,

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June 1, 1968

Pursuant to Rule 42 of the rules of this Court *Amicus* initially sought permission from the parties to file a friend of the court brief in support of Appellant. Appellant granted this permission on April 5, 1968. However, on April 12, Appellees denied permission. In light of the short period of time remaining in which to prepare the final brief, *Amicus* has appended the brief to the motion.

MOTION OF THE UNITED STATES NATIONAL STUDENT ASSOCIATION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

I. INTEREST OF THE AMICUS CURIAE

Amicus United States National Student Association (USNSA) is a confederation of over three hundred college and university student governments. USNSA is engaged in programs to enhance student academic freedom and is a signatory to the *Joint Statement on the Rights and Freedoms of Students* endorsed by the Association of American Colleges, the National Association of Women Deans and Counselors, the National Association of Student Personnel Administrators, and the American Association of University Professors.

The USNSA and its member student governments have a significant interest in the present case because the challenged school regulation seriously inhibits the freedom of expression of high school students. A decision upholding the regulation would lend weight to the position of some college authorities who contend that free expression on the college campus is always subordinate to all general college rules and regulations, however restrictive of expression they may be. The decision which *Amicus* and Appellants support, however, would increase the academic freedom of college students by necessary inference because it would protect this freedom, to a degree, for high school students. Moreover, an increased degree of academic freedom for high school students would better enable them to develop an independent comprehension of current social, political, and economic issues. The high school student, upon entering college, could then benefit more

significantly from exposure to the diverse currents of higher education. Ultimately, the nation as a whole would reap this benefit in the form of a citizenry better prepared to deal with the complexities of a modern, changing society.

USNSA, through educational projects and participation as an *Amicus*, seeks to pursue these goals by encouraging the protection of First Amendment rights for college students, present and future. The reasons for this concern were forcefully stated by this Court over twenty-five years ago in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 637 (1943):

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

For these reasons USNSA considers its interest in this case significant and asks to be represented before this Court.

II. QUESTIONS OF LAW TO BE PRESENTED BY AMICUS

1. *Amicus* will argue that public high school officials cannot, consistent with the First and Fourteenth Amendments, forbid symbolic expression by students on school premises until this expression imminently threatens orderly operation of the classroom or other

facility. Appellants do not base their argument on this proposition, but contend that the school regulation prohibiting arm bands constituted an invalid censorship of speech. *Amicus* will argue that regulations which infringe upon student speech are invalid *per se*, and that symbolic expression by students on school premises cannot be curtailed except upon a factual showing that the specific expression imminently threatens disruption of a legitimate school operation. *See, e.g., West Virginia Board of Education v. Barnette*, 319 U.S. 624, 633, 639 (1943); *cf. Niemotko v. Maryland*, 340 U.S. 268, 271-72 (1951); *Kunz v. New York*, 340 U.S. 290, 293-94 (1951); *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949); *Burnside v. Byars*, 363 F.2d 744, 748-49 (5th Cir. 1966); *Dickey v. Alabama Board of Education*, 273 F. Supp. 613, 619-21 (M.D. Ala. 1967). *But see Ferrell v. Dallas Independent School District*, — F.2d —, No. 24301 (5th Cir. Mar. 29, 1968).

Because this argument merits presentation and differs fundamentally from that of Appellants, *Amicus* respectfully requests leave of the Court to develop it in a brief.

2. *Amicus* will further argue that the academic freedom decisions of this Court have direct bearing upon the instant case in that free inquiry by students at the level of secondary education is chilled by the decision of the lower court. In a series of cases beginning with *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), this Court has stressed the overriding importance of free inquiry and expression in educational institutions. The Court in *Sweezy said*:

> "Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understand-

ing; otherwise our civilization will stagnate and die."

See also Whitehill v. Elkins, 389 U.S. 54, __, 88 S. Ct. 184, 187 (1967); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *cf. Dombrowski v. Pfister*, 380 U.S. 479 (1965).

The instant case illustrates a regulation in an educational setting which induces conformity in thought and action, although no state interests are threatened wih imminent disruption. *Amicus* will argue that the principles of *Sweezy*, *Whitehill*, and *Keyishian* therefore have direct relevance to resolution of this controversy, and support a reversal. Moreover, *Amicus* will rely in part upon literature from the sphere of adolescent psychology which indicates that high school regulations restrictive of student expression tend to inhibit a student's ability and desire to explore political and social issues of a controversial nature. Appellants have not developed this line of inquiry.

* * * * *

For the above reasons the United States National Student Association respectfully requests leave of this Court to file a brief as *Amicus Curiae*.

CERTIFICATE OF SERVICE

This is to certify that the motion of the United States National Student Association for leave to file a brief as *Amicus Curiae* has been served upon the following counsel of record, by airmail postage prepaid, this 10th day of May, 1968:

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IN THE

Supreme Court of the United States

No. 1034

JOHN F. TINKER, *Et Al., Appellants,*

v.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, *Et Al., Appellees.*

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF THE UNITED STATES NATIONAL STUDENT ASSOCIATION AS *AMICUS CURIAE*

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BRIEF OF THE UNITED STATES NATIONAL STUDENT ASSOCIATION AS *AMICUS CURIAE*

I. INTEREST OF THE AMICUS CURIAE

Amicus United States National Student Association (USNSA) is a confederation of over three hundred college and university student governments. USNSA is engaged in programs to enhance student academic freedom and is a signatory to the *Joint Statement on the Rights and Freedoms of Students* endorsed by the Association of American Colleges, the National Association of Women Deans and Counselors, the National Association of Student Personnel Administrators, and the American Association of University Professors.

The USNSA and its member student governments have a significant interest in the present case because the challenged school regulation seriously inhibits the freedom of expression of high school students. A decision upholding the regulation would lend weight to the position of some college authorities who contend that free expression on the college campus is always subordinate to all general college rules and regulations, however restrictive of expression they may be. The decision which *Amicus* and Appellants support, however, would increase the academic freedom of college students by necessary inference because it would protect this freedom, to a degree, for high school students. Moreover, an increased degree of academic freedom for high school students would better enable them to develop an independent comprehension of current social, political, and economic issues. The high school student, upon entering college, could then benefit more significantly from exposure to the diverse currents of higher education. Ultimately, the nation as a whole would reap this benefit in the form of a citizenry better prepared to deal with the complexities of a modern, changing society.

USNSA, through educational projects and participation as an *Amicus*, seeks to pursue these goals by

encouraging the protection of First Amendment rights for college students, present and future. The reasons for this concern were forcefully stated by this Court over twenty-five years ago in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 637 (1943):

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

For these reasons USNSA considers its interest in this case significant and has asked to be represented before this Court.

II. SUMMARY OF FACTS

The facts are reported in the District Court's opinion styled *Tinker v. Des Moines Independent Community School District*, 258 F. Supp. 971 (S.D. Iowa 1966), *aff'd mem. by an equally divided court*, 383 F.2d 988 (8th Cir. 1967) (en banc). *Amicus* will summarize and stress the particular facts material to the First Amendment arguments presented in this brief.

Appellants John and Mary Tinker grew up in a religious setting where opposition to violent warfare was an important element of religious belief (R. 11, 12, 21, 26). Like many students similarly situated they learned of a plan to wear black arm bands to school as a symbolic expression of grief for the victims of the war in Vietnam. The arm bands were also an endorsement of Senator Robert F. Kennedy's proposal that the Christmas truce of 1966 be extended indefinitely.

The school authorities, however, promulgated a regulation to prevent this form of expression. The students could choose between wearing the arm bands and not continuing their secondary education. Mary Tinker chose to test the restriction in a peaceful and orderly way. She attended school on the morning and into the afternoon of December 16 wearing an arm band. Miss Tinker created no disorder in the school during that time (R. 21-24). Nonetheless, the school authorities, upon discovering her expression, summarily ordered her to return home. Another appellant, Christopher Eckhardt, also wore an arm band to school on December 16. He went directly to the principal's office that morning and was summarily suspended (R. 27). John Tinker wore an arm band the following day. He attended classes during the morning and afternoon. Although John Tinker created no disturbance he too was ordered to leave the school (R. 13-15).

General reasons stated for the prior restriction of arm bands on this occasion included the following: (1) that arm bands were inappropriate dress for students, (2) that other students would be forced to view the arm bands against their will, (3) that appropriate assemblies were held on national holidays to honor war dead, (4) that other students might wear arm bands of different colors, and (5) that other students, friends of a young man killed in Vietnam, might create a disturbance (S.R. 27).

After a full hearing the District Court dismissed the complaint and held that:

> "School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court."

258 F. Supp. at 973.

The Eighth Circuit Court of Appeals ultimately heard the controversy *en banc*, divided evenly, and accordingly affirmed without opinion. 383 F.2d 988. This Court

granted certiorari on March 4, 1968.—U.S.—; 88 S. Ct. 1050.

III. ARGUMENT

PUBLIC HIGH SCHOOL OFFICIALS CANNOT, CONSISTENT WITH THE FIRST AND FOURTEENTH AMENDMENTS, SUPPRESS SILENT SYMBOLIC EXPRESSION BY STUDENTS ON SCHOOL PREMISES UNTIL THIS EXPRESSION IMMINENTLY THREATENS ORDERLY OPERATION OF THE CLASSROOM OR OTHER SCHOOL FACILITY.

The unquestionably leading case on the First Amendment rights of high school students is *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943) (compulsory flag salute case). In a carefully reasoned opinion Mr. Justice Jackson there held that

> "censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish."

319 U.S. at 633. The Court specifically rested its decision in *Barnette* on free expression grounds, rather than the alternate rationale of interference with free exercise of religion. 319 U.S. at 634. *Barnette*, as *Tinker*, concerned students in a classroom who silently expressed an opinion which might prove offensive to their classmates. Nonetheless *Barnette* recognized that the State interest was insufficient to justify suppression, and that the State could not restrict the students' expression unless necessary "to prevent grave and immediate danger to interests which the State may lawfully protect." 319 U.S. at 639. The State interests asserted in the instant case are no greater than in *Barnette*. An interest in requiring unifrom student garb hardly rises to the stature of the First Amendment. An interest in protecting other students from seeing arm bands is also no greater than that of preventing West Virginia students from seeing some of their friends refuse to salute the American flag. Nor is the interest in preventing speculative disturbances caused by students whose friend had been killed in Vietnam any different from requiring students to

salute the American flag in order to please friends whose fathers or relatives might have been risking their lives in World War II.

In its opinion the lower court held that "if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld . . . ." 258 F. Supp. at 973. The District Court found support in *United States v. Dennis*, 183 F.2d 201, 212 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951). *Dennis*, however, expressly approved *Barnette*, and stated that the clear and present danger test retained its validity in the broad range of cases not involving danger to national security. Chief Justice Vinson, writing for the Court, said, 341 U.S. at 508-09:

> "In this case [*Dennis*] we are squarely presented with the application of the 'clear and present danger' test, and must decide what that phrase imports. We first note that many of the cases in which this Court has reversed convictions by use of this or similar tests have been based on the fact that the interest which the State was attempting to protect was itself too insubstantial to warrant restriction of speech. In this category we may put such cases as . . . *West Virginia Board of Education v. Barnette*, 1943, 319 U.S. 624 . . . ."

Moreover, numerous other cases decided by this Court have cited *Barnette* with approval. *See, e.g., Brown v. Louisiana*, 383 U.S. 131, 146 n.5 (1966) (Mr. Justice Brennan, concurring); *Baggett v. Bullitt*, 377 U.S. 360, 371 (1964) (opinion of the Court by Mr. Justice White); *School District of Abington v. Schempp*, 374 U.S. 203, 226 (1963) (opinion of the Court by Mr. Justice Clark); *Torasco v. Watkins*, 367 U.S. 488, 492 n.7 (1961) (opinion of the Court by Mr. Justice Black); *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961) (opinion of the Court by Mr. Chief Justice Warren); *Speiser v. Randall*, 357 U.S. 513, 536 (1958) (Mr. Justice Douglas, concurring); *McCollum v. Board of*

Education, 333 U.S. 203, 2[illegible] (1948) (Mr. Justice Jackson, concurring). Also, this Court has continued to apply the clear and present danger standard or a similar test in free expression cases coming before it. *See, e.g., Elfbrandt v. Russell*, 384 U.S. 11, 18 (1966) ("A statute touching [First Amendment] rights must be 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State.' "); *Wood v. Georgia*, 370 U.S. 375, 384 (1962) (The clear and present danger test is " 'a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished.' "); *cf. DeGregory v. New Hampshire*, 383 U.S. 825, 835 (1966) (To infringe upon First Amendment rights there must be a "showing of 'overriding and compelling state interest.' "). And, this Court has consistently held that high school students are no less citizens because of their ages. The Court in *Barnette* called for "scrupulous protection of Constitutional freedoms of the individual if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." 319 U.S. at 637. Moreover, the *Barnette* Court expressly held that free expression was the issue before it, not free exercise of religion. 319 U.S. at 634-35 & n.15 ("Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held."). However, where high school students sought protection for their free exercise of religion or freedom from regulations respecting an establishment of religion, this Court has accepted its historical responsibility to secure these rights. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962); *McCollum v. Board of Education*, 333 U.S. 203 (1948). Finally, in the sphere of juvenile correction, the Court has again reaffirmed the proposition that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault*, 387 U.S. 1, 14 (1967).

The overall impact of the decisions, then, is that a

state cannot relegate its young citizens to second-class status where rights of political expression are concerned. It cannot infringe upon these basic First Amendment interests until their exercise creates an imminent threat to an overriding State interest such as orderly operation of the classroom. The record in this case reveals the transparency of any argument that orderly operation of the school was endangered by the wearing of arm bands. A speculative probability of future disorder, moreover, would leave the First Amendment rights of these students to the whims of the least secure of their mentors. For these reasons the decision of the lower court cannot stand.

It could be argued that *Barnette* stands for no more than the proposition that school officials cannot compel an affirmation of political belief from their students. Here, however, as in *Barnette*, there is " 'the brutal compulsion that requires a sensitive and conscientious child to stultify himself in public'." 319 U.S. at 635 n.15. Here the students wished only to express themselves in the most silent and least obnoxious way, in much the same manner as pupils wearing "freedom buttons" in Philadelphia, Mississippi classrooms, *see Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966), or similar arm bands to mourn the death of Dr. Martin Luther King. *Barnette*, moreover, refutes any such wooden translation in its reliance on *Stromberg v. California*, 283 U.S. 359 (1931), in which "Chief Justice Hughes led this Court in holding that the display of a red flag as a symbol of opposition by peaceful and legal means to organized government was protected by the free speech guaranties of the Constitution." *Barnette*, *supra*, at 633.

The few instances in which this Court has tolerated limitations on the unrestricted rights of expression for young people have been marked by wholly different considerations from those present in this case. They therefore have no bearing upon the present controversy. *See, e.g., Ginsberg v. New York*, — U.S. —, 36 U.S.L.W. 4295 (April 23, 1968) (upholding state

"criminal obscenity statute which prohibits the sale to minors under 17 years of age of material defined to be obscene on the basis of its appeal to them whether or not it would be obscene to adults." 36 U.S.L.W. at 4295); *Zorach v. Clauson*, 343 U.S. 306 (1952) (upholding New York City released time system for religious instruction); *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944) (state can regulate child labor even though *conduct* involved was sale of religious literature).

1. PRIOR RESTRAINTS ON SILENT SYMBOLIC EXPRESSION ARE INVALID PER SE UNLESS NARROWLY DRAWN TO AVOID ADMINISTRATIVE ABUSE AND PROTECT LEGITIMATE, OVERRIDING STATE INTERESTS.

The lower court's decision in *Tinker* squarely validates the asserted power of a state board of education to place prior restraints upon the exercise of First Amendment rights by high school students on school premises and in the classroom. An important issue before this Court, therefore, must be not only the limits upon the school's authority in punishing expression, but the limits on the school in promulgating general regulations which purport to satisfy legitimate school interests where they conflict with the First Amendment rights of students. The *Tinker* standard accords undue weight to the discretion of school administrators. It would permit prior restraints of a broad nature, and of the character which violate the First Amendment under settled principles announced by this Court. On the issue of prior regulation of student expression, the Court in *Tinker* said:

> "School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the

> plaintiffs of their constitutional right to freedom of speech."

258 F. Supp. at 973. This standard is in direct conflict with the principles of *Barnette* where this Court recognized that administrative discretion by school boards was always subject to the important limits placed on all official authority by the Bill of Rights. Justice Jackson there said:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights."

319 U.S. at 637. Literally read, the *Tinker* decision would validate any school regulation of student expression on school premises or in the classroom whenever the whim or convenience of school authorities saw fit to impose rules with some rational relationship to school order and discipline. However well-intentioned, rules resting on such slim foundations could be used to convert public high schools into quiet military academies. As this Court recently said concerning an ordinance which purported to protect order on public sidewalks:

> "Literally read, therefore, . . . this ordinance says that a person may stand on a public sidewalk in Birmingham only at the whim of any police officer of that city. *** Instinct with its ever present potential for arbitrarily suppressing First Amendment liberties, that kind of law bears the hallmark of a police state."

Shuttlesworth v. Birmingham, 382 U.S. 87, 90-91 (1965). Numerous other decisions by this Court have reiterated the important proposition that no government official may be given the discretion to restrict free speech merely when a reasonable basis exists for doing so. *See, e.g., Kunz v. New York*, 340 U.S. 290,

293-94 (1951) ("Although this Court has recognized that a statute may be enacted which prevents serious interference with normal usage of streets and parks, . . . we have consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places."); *Niemotko v. Maryland*, 340 U.S. 268, 271-72 (1951) (This Court has "condemned statutes and ordinances which required that permits be obtained from local officials as a prerequisite to the use of public places, on the grounds that a license requirement constituted a prior restraint on freedom of speech, press, and religion, and, in the absence of narrowly drawn, reasonable and definite standards for the officials to follow, must be invalid."); *cf. Feiner v. New York*, 340 U.S. 315 (1951). The regulation in *Tinker* is one step removed from the stage of a permit in that it constitutes a blanket prohibition of a particular form of expression on school premises and in the classroom. Moreover, the lower court's decision authorizes this and like regulations whenever school authorities have a "reasonable" basis to predict disruption and take "reasonable" steps to prevent it. Such an authorization is patently overbroad under the decisions in *Barnette*, *Kunz*, and *Niemotko*. *Compare Hammond v. South Carolina State College*, 272 F. Supp. 947 (D.S.C. 1967) (college rule prohibiting "parades, celebrations, and demonstrations" without prior approval of college authorities invalidated as a prior restraint in absence of "showing of a clear and present danger, of riot, disorder, or immediate threat to public safety, peace, or order." 272 F. Supp. at 950).

Amicus recognizes that a high school has a legitimate and substantial interest in maintaining order in the classroom and on school premises. A student speaker who attempts to incite his classmates to riot need not be allowed to continue his presentation. Nor could students be allowed to bring neon signs or large political posters into their classrooms. Conduct which would

inevitably create major disorders in the classroom can certainly be stopped at the outset or prevented by narrow prior regulation. The case presented here, however, is different in kind and degree. Arm bands hardly differ from normal attire such as boy scout uniforms, scarves, school sweatshirts, or yo-yo sweaters. Moreover, the appellants were not seeking to speak before their classes nor to do any more than that which is done by students wearing campaign buttons or freedom buttons.

Accordingly, *Amicus* respectfully urges this Court to hold that school regulations which amount to prior restraints on speech are presumptively invalid unless narrowly drawn to prevent administrative abuse and protect legitimate, overriding school interests. *Kunz v. New York, supra; Niemotko v. Maryland, supra; see also NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 307-08 (1964); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

2. A PRIOR RESTRAINT ON SYMBOLIC EXPRESSION CANNOT BE JUSTIFIED BY THE MERE REASONABLE POSSIBILITY OF HOSTILE REACTION TO THE EXPRESSION.

In a considerable line of cases this Court has settled the question of whether one's First Amendment rights depend upon his being well received by those who hear or see his expression. Nonetheless, citing no cases, the lower court justified its position in part on the possibility that "the reactions and comments of other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom." 258 F. Supp. at 973. Recently this Court reiterated the proposition that persons exercising their First Amendment rights cannot be suppressed because of the possibility of adverse reaction by others. *Brown v. Louisiana*, 383 U.S. 131 n.1 (1966):

> "Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their

> critics might react with disorder or violence. *See Cox v. State of Louisiana* . . . , 379 U.S. at 551-552 . . . *Wright v. State of Georgia*, 373 U.S. 284, 293 . . . , *cf. Terminiello v. Chicago*, 337 U.S. 1 . . . . *Compare Feiner v. People of State of New York*, 340 U.S. 315 . . . . *Chaplinsky v. State of New Hampshire*, 315 U.S. 568 . . . *cf. Niemotko v. State of Maryland*, 340 U.S. 268, 289 . . . (concurring opinion of Frankfurter, J.). See generally on the problem of the "heckler's veto," KALVEN, THE NEGRO AND THE FIRST AMENDMENT, pp. 140-160 (1965)."

This position is a sound one because:

> "A 'function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.' "

Cox v. Louisiana, 379 U.S. 536, 551-52 (1965) (with reference to the breach of the peace conviction). The fact that appellants in this controversy were exercising their silent symbolic expression on school premises and in classrooms is of no greater weight in this case than it was in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), where this Court did not even consider the hostility argument sufficiently meritorious to justify discussion. In *Barnette*, as here, the "sole conflict is between authority and rights of the individual." 319 U.S. at 630. "Nor is there any question in this case that [the students' behavior] is peaceable and orderly." *Id.* The *Tinker* record affirmatively establishes this point.

For these reasons *Amicus* respectfully urges this Court to reaffirm the proposition that a prior restraint on the silent symbolic expression of high school students cannot be justified by the mere reasonable possibility of some hostile reaction from their fellow students. To do otherwise would make First Amendment rights depend for their exercise upon the agreement of

those who hold a contrary opinion. The right to speak would then be narrowed to the meaningless right to agree.

3. IN ORDER TO ENCOURAGE AN ATMOSPHERE OF FREE INQUIRY AND TOLERANCE TOWARD MINORITY BELIEFS, HIGH SCHOOL AUTHORITIES HAVE AN AFFIRMATIVE OBLIGATION TO LIMIT RESTRAINTS ON STUDENT EXPRESSION TO THE LEAST RESTRICTIVE ALTERNATIVE AVAILABLE FOR THE PROTECTION OF LEGITIMATE, OVERRIDING SCHOOL INTERESTS.

The importance of maintaining an atmospheree of free inquiry in high school and college classrooms is a point to which this Court has given special recognition. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), Justice Brennan wrote:

> "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us . . . . That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

Although *Keyishian* involved state employee loyalty oaths, the basic principle is applicable to preventing coerced conformity in the high school classroom. High school students cannot be viewed simply as information absorbing subjects of the State. If students are to become mature, creative individuals they must be taught to understand the use of ideas associated not only with mathematics and chemistry, but also with the Bill of Rights. The lesson of appellants and their associates in *Tinker* thus far has been that silent symbolic expression will not be tolerated by authority nor by the courts. They have seen that "the import of words in the Bill of Rights very often fails to get off the printed page and into real life." Brennan, *Education and the Bill of Rights*, 113 U. PA. L. REV. 219 (1964).

To suppress student expression which involves a mere reasonable tendency to cause possible disorder, as the Court in *Tinker* did, is to defeat and chill young people in what may well be their initial efforts at independent evaluation of political questions. This form

of suppression compounds the failure of secondary education to encourage active inquiry into current social, political, and economic questions, and teaches students to ignore uncomfortable aspects of modern problems. *See* J. Henry, *Education for Stupidity*, 10 N.Y. REVIEW OF BOOKS No. 9, at 20 (May 9, 1968). The problem posed by this case, moreover, is part of the larger problem of suppression of critical thought and expression by high school teachers, *see* H. ZEIGLER, THE POLITICAL LIFE OF AMERICAN TEACHERS 93-144 (1967), and of college teachers as well. *See* W. P. METZGER, ACADEMIC FREEDOM IN THE AGE OF THE UNIVERSITY 139-93 (1955). *See also* C. EATON, *Academic Freedom Below the Potomac, in* THE FREEDOM-OF-THOUGHT STRUGGLE IN THE OLD SOUTH 216-17 (1964 ed.); A. MEIKLEJOHN, *The Freedom of Scholars and Teachers*, in POLITICAL FREEDOM 125-47 (1965 ed.). Moreover, to a large extent, the recent uprisings of students in American universities can be attributed to denials of the rights of free expression and association, and obstinate failure by educators to undertake educational reform. *See, e.g.*, E. WILLIAMSON & J. COWAN, THE AMERICAN STUDENTS' FREEDOM OF EXPRESSION 150-70 (1966); Rossman, *The Movement and Educational Reform*, in *Symposium — Youth 1967 — The Challenge of Change*, 36 AM. SCHOLAR No. 4, at 594-600 (1967); Peterson, *The Student Left in American Higher Education*, in *Symposium — Students and Politics*, J. AM. ACAD. OF ARTS & SCIENCES 293-317 (Winter, 1968).

While this Court certainly has no power to initiate educational reform, its role in protecting free discussion is inescapably relevant to all aspects of the academic freedom problem outlined above. *See, e.g.*, Van Alstyne, *Student Academic Freedom and the Rule-Making Powers of Public Universities*, 2 LAW IN TRANS. QUART. 1 (1965) (discussion of areas in which students may be able to seek a redress of grievances through peaceful litigation); Washington Post, April

27, 1968, at A4, col. 5 (speech by Harvard law professor and AAUP President, Clark Byse: "Far better, it seems to me, for students to be encouraged to utilize the orderly processes of the courts than to strike, sit in, or engage in other confrontations . . . ."); *cf.* T. I. EMERSON, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT 13 (1967 ed.) ("[F]reedom of expression, far from causing upheaval, is more properly viewed as a leavening process, facilitating necessary social and political change and keeping a society from stultification and decay."). To encourage student innovation and expression in the classroom and on school premises, then, is one reason why the First Amendment principles of academic freedom should be applied in this case.

Of special relevance to the problem of student expression in high school are the findings of psychologists who have studied the interrelations between student creativity, free expression, and conformity. These findings need not be viewed as conclusive or final, but they do indicate that a maximum of free student expression would encourage the development of creative students, and would deter, to a degree, the stifling effects of group conformity.

In discussing the factors which encourage the development of creative individuals, Vinacke found it "generally agreed that encouragement and reward for originality constitute essential conditions" for the development of creative individuals." W. E. VINACKE, FOUNDATIONS OF PSYCHOLOGY 213 (1968). He further found that "parents, school, and peer groups all exert heavy pressures towards conformity, again at the cost of varied experience and the questioning and exploration typical of creativity." *Id.* The findings of Vinacke are typical of those by other respected authorities on adolescent psychology. W. J. MCKEACHIE & C. L. DOYLE, PSYCHOLOGY 587-93 (1966); B. R. MCCANDLESS, CHILDREN AND ADOLESCENTS 357, 367-77, 399-401 (1961). These all support a careful, but full application of the First Amendment to high school

students, because they indicate that free expression promotes creativity and is consistent with the progress-oriented underpinnings of that Amendment.

The encouragement of student development, of course, is not the only legitimate goal of secondary education. The school must be able to maintain quiet in the classroom and avoid violent controversy on or near school premises. This the school can do, however, by punishing the perpetrators of noise or violence, rather than by maintaining strict conformity of dress and expression. Administrative convenience has never been given a preferred placed in the Constitution when First Amendment rights were at stake, and when less restrictive alternatives were readily available for the satisfaction of legitimate government interests. A line of cases in this Court so holds. *Elfbrandt v. Russell*, 384 U.S. 11, 18 (1966), for example, reaffirmed the established principle that

> "legitimate legislative goals 'cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.'"

Elfbrandt applied this principle in the context of the government interest in preventing "subversion" by school teachers. The context of student expression is one of similar character. Appellants are accused of expression which might lead to disorder in the classroom. The disorder, however, could have been prevented, if it had materialized, by rules regulating the conduct of appellants and other students. Hostility by other students could have been regulated by general admonitions to all students that they should respect the views of those with whom they disagree. In future cases school authorities should be required to pursue their goals by such less restrictive alternatives. Of similar import to *Elfbrandt* is *Lamont v. Postmaster General*, 381 U.S. 301, 310 (1965), where this Court stated that

> "in the area of First Amendment freedoms, gov-

> ernment has the duty to confine itself to the least intrusive regulations which are adequate for the purpose."

Again, *Lamont* concerned the government interest in stopping "subversion" by curtailing mail from a particular group of totalitarian countries. Yet this Court held that the requirement that recipients take an affirmative step to receive the mail was an abridgment of First Amendment rights, and could not be upheld because the government had more direct means of preventing totalitarian subversion. *See also McGowan v. Maryland*, 366 U.S. 420, 462 (1961) ("[I]f the object sought by the reglation could with equal effect be achieved by alternate means which do not substantially impede those . . . practices, the regulation cannot be sustained.").

Amicus therefore urges this Court to hold that high school authorities have an affirmative obligation to limit restraints on student expression to the least restrictive alternatives available for the protection of legitimate, overriding school interests.

4. DECISIONS OF THE FIFTH AND SECOND CIRCUITS HAVE PERMITTED UNDUE RESTRICTIONS ON STUDENT EXPRESSION IN LIKE CASES AND SHOULD BE DISAPPROVED.

The *Tinker* case is not an isolated instance of the kind of litigation which arises on rare occasion. Although thirty-four years have passed since this Court decided *Hamilton v. Regents*, 293 U.S. 245 (1934) (compulsory military training for college males upheld), and twenty-five years since *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), became valid law, the lower courts have faced analogous issues with increasing frequency in recent years, and there is every reason to believe that the courts will be called upon to apply *Tinker* to solve certain basic First Amendment problems in high schools and colleges for several years in the future. For this reason *Amicus* urges this Court to consider this case in the context of the several conflicts which exist within and among the

courts, and to decide the case on the basis of principles which can enable students, faculty, and administrators to adjust their regulations to meet problems which already exist or will arise in the foreseeable future. *Hamilton* and *Barnette* are the only decisions of this Court in the last forty years on the rights of expression for high school and college students, and they have been interpreted in almost as many different ways as those set out in K. LLEWELYN, THE COMMON LAW TRADITION 62-167 (1960) (Llewelyn suggested that at least sixty-four different techniques were in common use for interpreting prior cases).

The instant case reached this Court on a direct conflict between the Fifth and Eighth Circuit Courts of Appeal. The lower court in *Tinker* held that high school authorities could adopt "reasonable" prior regulations upon student expression if the authorities could "reasonably" anticipate disruption on school premises caused by reaction to the expression. 258 F. Supp. at 973. *Amicus* has attempted to show that this standard departs in several important respects from the decision of this Court in *Barnette*, namely, that prior restraints must be very narrowly drawn, and that student expression cannot be punished except upon a showing of an imminent threat to orderly operation of the school, caused not by reaction to the expression, but by the expression itself.

Decisions of the Fifth Circuit have followed a slightly different standard from that of the lower court in *Tinker*. *See, e.g.*, *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966) (not appealed); *Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966) (not appealed); *Ferrell v. Dallas Independent School Dist.*, — F.2d —, No. 24301 (5th Cir. Mar. 29, 1968); *Dickey v. Alabama Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967) (appeal argued April 29, 1968); *cf. Due v. Florida A. & M. University*, 233 F. Supp. 396 (N.D. Fla. 1963).

Burnside, for example, held that a school official

could promulgate "reasonable" rules and regulations which impinged upon student expression, provided these rules were "materially and substantially" related to "the requirements of appropriate discipline in the operation of the school." 363 F.2d at 748-49. Moreover, *Burnside* ignored the clear and present danger standard of *Barnette*, and read *Dennis v. United States* to authorize a "balancing" of the First Amendment rights of the students with the broad State interest in "maintaining an educational system." 363 F.2d at 748. As pointed out earlier in this brief *Dennis* specifically adhered to the clear and present danger standard of *Barnette* for the kind of issue present in *Burnside* (students expelled pursuant to rule forbidding the wearing of "freedom buttons"). 341 U.S. at 508-09. For this reason the standard in *Burnside* should be specifically disapproved as unduly restrictive of First Amendment rights.

Blackwell, the companion case of *Burnside*, reached a contrary result. The Fifth Circuit there upheld the suspension of students wearing freedom buttons under the same standard enunciated in *Burnside*. A large group of students were denied their right to an education because a small number created disorder which interfered, for a time, with efficient operation of the school. The Court in *Blackwell* made no mention of clear and present danger, nor did it pursue the course of requiring school authorities to seek less restrictive alternatives with which to avoid curtailment of First Amendment rights. In a recent Fifth Circuit case former Chief Judge Tuttle specifically rejected *Blackwell*. *Ferrell v. Dallas Independent School Dist.*, — F.2d —, No. 24301 (5th Cir. Mar. 29, 1968) (dissenting opinion). Judge Tuttle found "courts too prone to permit a curtailment of a constitutional right of a dissenter, because of the likelihood that it will bring disorder, resistance or improper or even violent action by those supporting the status quo." *Id.* *Amicus* contends that Judge Tuttle's dissent expresses an appropriate standard consistent with *Barnette* and nec-

essary for the protection of First Amendment rights. *Blackwell*, however, has been followed not only by the majority in *Ferrell*, but also by at least one lower court. *Jones v. Board of Education*, 279 F. Supp. 190, 198 (M.D. Tenn. 1968). A similar "balancing" approach, with the balance weighted against First Amendment rights, was taken in *Goldberg v. Regents*, 57 Cal. Rptr. 463, 470-72 (Dist. Ct. App. 1967). These cases should be disapproved if the First Amendment rights of students are to receive the protection to which they are entitled under *Barnette*. *See also Green v. Howard University*, 271 F. Supp. 609 (D.D.C. 1967), *injunction pending appeal granted in part*, Civ. No. 21,267 (D.C. Cir. Sept. 8, 1967) (appeal pending before Bazelon, Wright, and Tamm, JJ.).

Finally, the approaches taken by the Eighth and Fifth Circuits have been paralleled by the Second Circuit Court of Appeals. In *Steier v. New York State Education Commissioner*, 271 F.2d 13 (2d Cir. 1959) (2-1), *cert. denied*, 361 U.S. 966 (1960), Chief Judge Clark dissenting, the Second Circuit upheld the expulsion of a college student for little more than sending a series of critical letters to the college president. *Steier* relied on *Hamilton v. Regents*, 293 U.S. 245 (1934), 271 F.2d at 16-17, to characterize college attendance as a mere "privilege" which could be taken away by virtually any state regulation. District Judge Gibson's opinion for the Court went so far as to find no jurisdiction in the federal court because "to take jurisdiction of a case such as this would lead to confusion and chaos in the entire field of jurisprudence in the United States." 271 F.2d at 18. Circuit Judge Moore, concurring, upheld the expulsion because the plaintiff's "overzealous campaign for the causes which he espoused must have had a disruptive effect on the environment of both student body and faculty." 271 F.2d at 19. Either of these approaches is clearly erroneous under decisions of this Court. *Barnette, supra; Brown v. Louisiana*, 383 U.S. 131 n.1 (1966). *Amicus* therefore urges this Court to disapprove *Steier* as un-

duly restrictive of the First Amendment rights of students.

For the reasons stated above, *Amicus* respectfully requests that this Court view *Tinker* in the context of other erroneous, analogous controversies, and provide guidelines with reference to similar future problems which will inevitably arise.

IV. CONCLUSION

Amicus has attempted to present an objective discussion of First Amendment law and policy as it pertains to resolution of this controversy. We hope our brief has been of value to this Court in reaching a just result. In accordance with the arguments developed in the brief, *Amicus* respectfully urges this Court to hold that

(1) Public high school officials cannot, consistent with the First and Fourteenth Amendments, suppress silent symbolic expression of students on school premises until this expression in itself imminently threatens orderly operation of the classroom or other school facility.

   (a) Prior regulation of silent, symbolic expression by students is invalid *per se* unless narrowly drawn to avoid administrative abuse and protect legitimate, overriding school interests.

   (b) Prior regulations of symbolic student expression cannot be justified by the mere reasonable possibility of hostile reaction to the expression.

   (c) In order to encourage a school atmosphere of free inquiry and respect for minority beliefs, high school authorities have an affirmative obligation to limit restraints on student expression to the least restric-

tive alternatives available for the protection of legitimate, overriding school interests.

(d) Decisions of numerous lower courts depart from the standards required by the First Amendment in student expression cases and are disapproved.

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SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
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OCTOBER TERM, 1967

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JOHN F. TINKER and MARY BETH TINKER, Minors, by Their Father and Next Friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, Minor, by His Father and Next Friend, WILLIAM ECKHARDT,
Petitioners,

vs.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS, and ELLSWORTH E. LORY,
Respondents.

ON WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1034

JOHN F. TINKER and MARY BETH TINKER, Minors, by Their Father and Next Friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, Minor, by His Father and Next Friend, WILLIAM ECKHARDT,
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vs.

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ON WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals (A. 77) is reported at 383 F. 2d 988. The opinion of the United States

District Court for the Southern District of Iowa, Central Division (A. 71) is reported at 258 F. Supp. 971.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit, en banc, was entered on November 3, 1967. It affirmed by an equally divided court the judgment of the United States District Court for the Southern District of Iowa, Central Division, which dismissed a complaint brought by petitioners under Section 1983 of Title 42 of the United States Code. Petition for a writ was granted on March 4, 1968. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

The question to be determined is whether the action of officials of defendant school district forbidding the wearing of arm bands on school facilities as a means of protesting the Viet Nam War deprived petitioners of Constitutional rights secured by the First and Fourteenth Amendments of the United States Constitution.

STATEMENT

In November, 1965, petitioner Christopher Eckhardt and his mother participated with a group of college students and Dr. Spock and others, including Students for Democratic Society in a march and demonstration in Washington, D. C. for an end of the Viet Nam War. (A. 30). The purpose of the trip to Washington in November of 1965, was an end the Viet Nam War march. It was a march from the White House to the Washington Monu-

ment. Christopher Eckhardt and his mother and others carried banners and placards protesting the war in Viet Nam. (A. 35).

On Saturday, December 11, 1965, following this march, a group including college students related to the Students for Democratic Society and some adults met at the Eckhardt home. (A. 52, 53, 54). One of the proposals suggested at this meeting was the wearing of black arm bands. (A. 53). (None of the petitioners attended this meeting.) It was made up of college students and adults.

About Saturday night, December 11, 1965, the parents of the petitioner Christopher Eckhardt told him some college students and interested people were going to be wearing black arm bands December 16 until January 1. His parents learned of this at a meeting at the Eckhardt home, but the petitioner Christopher Eckhardt did not attend that meeting. (A. 30).

On Thursday, December 16, Christopher Eckhardt first wore the black arm band to Roosevelt High School. He arrived at about 8:00 A.M. and went directly to the principal's office. A student asked him if he knew there was a rule against wearing the black arm band, and Christopher Eckhardt said he knew there was a rule against it. The Wednesday morning paper contained an article saying the principals had met together and had decided it would cause a disturbing influence in the schools and they had prohibited it. Christopher Eckhardt thought he might be suspended, and that is why he went directly to the principal's office. Mr. Blackman, the vice principal, asked him to take the arm band off and Christopher Eckhardt told him he was not going to, and the vice principal said he would have to suspend him because the principals had decided it was against the rules to wear black arm bands. (A. 30, 31).

The vice principal called Christopher Eckhardt's mother. (A. 31). At that time Christopher Eckhardt's mother held some office in the Women's International League for Peace and Freedom. Mrs. Eckhardt and Christopher had carried placards protesting the war in Viet Nam in the march from the White House to the Washington Monument. Christopher Eckhardt wore the black arm band to school as a matter of protest of the war in Viet Nam and a hope for a Christmas truce. He hoped in some small way to influence public opinion toward his views of the war in Viet Nam. (A. 35, 36).

Christopher Eckhardt had walked from Ames to Des Moines two and one-half years before in a Civil Rights demonstration, and also was at a demonstration at the Hotel Fort Des Moines. His parents have participated in some of the other marches. (A. 36).

When Mr. Blackman, the vice principal, called Mrs. Eckhardt, she said Christopher had a constitutional right to wear the arm band if he so desired. (A. 44).

Rev. Leonard Tinker is a Methodist minister without a church, under appointment by the Methodist appointive powers to serve as "Secretary for Peace and Education". He is paid a salary by the American Friends Service Committee but has no connection with the Friends Church. He is familiar with the Students for Democratic Society. There were Students for Democratic Society and some adults at the Eckhardt home on Saturday, December 11, 1965, people who had been to Washington for the march assembled at the Eckhardts. Rev. Tinker came into the meeting at the close of the session to get his wife and was generally aware of what took place. One of the proposals was wearing black arm bands to support the truce supported by Senator Kennedy to mourn the deaths in Viet Nam. (A. 52, 53).

A second meeting was held at the Eckhardt home on Sunday, December 12, of high school, liberal, religious youths. (A. 54).

Rev. Tinker knew his children went to school with black arm bands. They knew about the proposal for college students to wear black arm bands. He testified he became convinced this was definitely a matter of conscience for the children and he considered it an exercise of their own constitutional right. (A. 55, 56).

Four of the Tinker children wore black arm bands. Petitioner John F. Tinker, age 15, attended North High. Petitioner Mary Beth Tinker, age 13, attended Warren Harding Junior High. Paul and Hope Tinker, age 8 and 11, respectively, the younger brother and sister of petitioners John and Mary Beth Tinker, also wore black arm bands to their respective schools. (Footnote A. 72).

Petitioner John F. Tinker testified that during the month of December, 1965, he decided to participate with several other people "in a witness or demonstration of views" by wearing black arm bands over the holiday season. (A. 15).

John has been in several demonstrations against the war and several Civil Rights demonstrations. The subject of the war in Viet Nam and the political and moral implications are discussed quite often in his home. (A. 16). John had not attended any meetings concerning wearing of arm bands prior to Wednesday, December 15. Most of the others wore arm bands on Thursday, December 16, but John first wore his arm band on Friday, December 17. (A. 16). After gym class some of the students were making fun of John for wearing the arm band. Others who were friends said they did not want him to get into trouble. Two or three boys made remarks in the locker room that

were not very friendly. He had lunch in the student center with several other students with whom he eats frequently. They warned him in a friendly manner to take the arm band off. There was one student with whom he had a feud in the 7th grade who was making smart remarks for about 10 minutes. There were 4 or 5 people with him standing and milling around. There were no threats to hit him. He was not in fear they might attack him because there were too many there. A football player named Joe Thompson told the kids to leave him alone. (A. 18). When he went to English class he still had the arm band on and Mr. Lory told him they were waiting for him in the office. He went down to the principal's office and the principal said he would have to ask him to take the arm band off, that he knew he couldn't wear it in school. He said something about following orders from higher up. When John told him he was not going to take the arm band off, Mr. Wetter told him he would have to leave school but would not be suspended, and that as soon as he took the arm band off or there was a different ruling on it that he could come back to school. (A. 19). John's father arrived at school and talked to Mr. Wetter. John never received a notice of official suspension. (A. 19).

John's sister, petitioner Mary Beth Tinker, wore a black arm band and got sent home from school. A younger sister, Hope, who is 11 and in the 5th grade, wore an arm band on Thursday morning, and Paul, who is 8, wore a black arm band to school on Thursday morning. John testified that his mother and father participated in most of the demonstrations against the war in Viet Nam and civil rights demonstrations that John has participated in. (A. 20, 21).

When John wore the arm band to school, his friends made complimentary remarks and those who were not his

friends, made uncomplimentary remarks. He supposed he was attracting some attention by wearing the arm band. He wanted students and everybody else that saw it to know he was wearing it, and he welcomed questions at school while he was wearing it. John and his parents are generally against the policy of the government in Viet Nam. By wearing the arm band he supposed he would have influenced public opinion about the matter of Viet Nam and to call attention to it; to influence people to believe as he did. On that day he ate lunch, the students made uncomplimentary remarks to him. Some referred to him as a "commie" and other things of that nature. Then one boy quieted everything down and told everybody to lay off John. (A. 22, 23).

Petitioner Mary Beth Tinker testified that she is 13 years old and decided to participate in the "witness or demonstration" by wearing a black arm band beginning Thursday, December 16 until New Years, fasting one day and Christmas Eve, and attending New Year's services at the Unitarian Church. She testified the purpose was to mourn the dead in Viet Nam and to urge a Christmas truce which hopefully would be open ended; to last and keep going on until there would be a settlement to end the war. This was not the first time she engaged in a witness or demonstration of her ideas about peace and war. There have been demonstrations off and on protesting the Viet Nam War and also about Civil Rights that she has been in. (A. 24, 25).

The students noticed the black arm band and asked about it and told her she had better take it off or she would get into a lot of trouble. This was in sewing class. In English class the students told her she had better take the arm band off. She wore the arm band to lunch in the cafeteria and a couple of girls sitting at her table told her

sible and asked if they would like to ask their child to remove the black arm band. If there was still refusal, the student would be sent home until such time as the black arm band should be removed or that the Board of Education should reverse the decision. (A. 45). The policy was directed not at the students but at the principle of demonstration in schools. Dr. Peterson testified:

"Q. I don't understand that. A. We had no particular students in mind whatsoever. No individual students. It was those who might go against the regulation. That could have been any of the 18,000 students. Q. But it was the principle involved? A. That's what I said, yes, the principle of the situation. Q. Over the Viet Nam War? A. No, it was the principle of the demonstration. . . ."

"'For the good of the school system we don't think this should be permitted. The schools are no place for demonstrations. We allow for free discussion of these things in the classes. The policy was based on a general school policy against anything that was a disturbing situation within the school. The school officials believe that the educational program would be disturbed by students wearing arm bands.' are correct statements of the policy as I remember it." (A. 46).

"It's understood among the principals that anything which interrupts the general educational procedure of the school may be excluded by the principal in the building itself." (A. 47).

Respondents' or defendants' Exhibit 4 sets out the history of events leading up to the banning of the arm bands. The national news media indicated the arm band's original intent was in protest to U. S. government policy in Viet Nam. Later it was changed to mourning

all the dead. A student at Roosevelt High School wanted to publish an article relating to Viet Nam. Not being able to find the principal, Dr. Rowley, he talked to Dr. Mitchum who called the superintendent and decided to call a meeting of the senior high principals for December 14 to ask them their suggestions for handling the wearing of black arm bands which was understood to take place December 16. All five senior high principals were in agreement to follow the procedure later outlined in the Board minutes of the meeting of December 21, 1965. Following the announcement to the students that arm bands would not be permitted, one of the students then contacted the newspaper. The reporter then contacted the school administrators for information. The secondary principals were called to meet on Thursday, December 23, to see if they thought it would be wise to alter the previous decision. All present felt a wise decision had been made in spite of public concern over one small aspect of the school program. The following reasons were given:

1. A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.

2. The schools hold appropriate assemblies on Veteran's Day to honor the dead. Also, Memorial Day is recognized.

3. The principals were following standard procedure for what is considered inappropriate dress, haircuts or other actions that attract attention.

4. Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed.

5. Principals felt that since the schools are made up of a captive audience, the other students should not be forced to view the demonstrations of a few.

6. One principal reported a Nazi arm band on a boy who came to school several weeks ago. When asked to remove it, he complied.

7. These students were sent home from school until such time as the students were willing to return without the arm band. No student was suspended for a specified length of time. (A. 68, 69, 70).

Ora Niffenegger, school board president, first had the matter of black arm bands called to his attention on December 16, 1965, which was Thursday. The regular board meeting was the following Tuesday. At the meeting the board decided to get legal advice and make further investigation. The board met again the first Monday evening in January and voted to uphold the administrative policy. That policy was the prohibition against the wearing of arm bands in school. The proponents of the arm bands appeared at the regular meeting in January, represented by Professor Craig Sawyer of the Drake Law School, and anyone could speak at the regular board meeting. If they would give their names ahead of time, it would be printed in the agenda if there was time for it. The board room was filled to overflowing. There were a few signs present. On several occasions it was a bit touch and go as far as maintaining order. In other words, there was some demonstration from people locally and apparently from outside the city. (A. 47, 48, 49).

On December 19, 1965, Sunday night before the Tuesday meeting of the board December 21, a meeting was called at the offices of Leonard Tinker at Friends House, 4211 Grand Avenue, at which 50 people were present, rela-

tive to the arm bands. Craig Sawyer was at this meeting. He represented the Civil Liberties Union. Reverend Tinker called the meeting on December 19, 1965. He was asked to refresh his recollection as to the origin of wearing the arm bands, referring to the newspaper of December 22, 1965, which says that Mrs. Eckhardt is President of the Women's International League for Peace and Freedom which joined with S.D.S. (Students for Democratic Society) in recommending that the arm bands be worn. Reverend Tinker read the article in the paper, but the implication of the paper as he understood it is not that the group met in any official way to instigate the wearing of the arm bands. Reverend Tinker had previously spoken against the United States policy in Viet Nam at a meeting at the post office in October. He declined to answer the question as to whether he agreed with Professor Sawyer's statement made at the school board meeting that he would support the freedom to wear a Nazi arm band or arm bands saying "down with the school board". (A. 59, 60, 61).

John Tinker testified that he attended the meeting of some fifty people at the building where his father's office is and there were some accounts by some of the students there as to physical violence that had been inflicted upon them over the wearing of the arm bands. Either Bruce Clark or Ross (Peterson) said somebody had struck him. It could have been both of them. He stated he was there and recalled hearing somebody say that. (A. 62).

The appendix which petitioners have furnished as setting out the record is defective. Page 29 follows page 24. Pages 25, 26, 27 and 28 precede page 23.

Page 74 is a repetition of page 73, and the appendix wholly omits a portion of the Court's memorandum opinion which follows what is shown on pages 73 and 74. In order to complete the record, respondents are setting out

herein the portion of the record which properly follows page 73 which is omitted from the appendix prepared by the petitioners, and have continued to the end of the record so this Court may have the matter in context. It reads as follows:

> "A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classroom. The avowed purpose of the plaintiffs in this instance was to express their views on a controversial subject by wearing black arm bands in the schools. While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance. The school officials involved had a reasonable basis for adopting the arm band regulation.
>
> "On the other hand, the plaintiffs' freedom of speech is infringed upon only to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Viet Nam war during any orderly discussion of that subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to the protection of the law.
>
> "Plaintiffs cite two recent opinions from the Court of Appeals for the Fifth Circuit in support of their position. Burnside v. Byars, Civil No. 22681, 5th Cir., July 21, 1966; Blackwell v. Byars, Civil No. 22712, 5th Cir., July 21, 1966. These cases involved the wearing of

'freedom buttons' in Mississippi schools. In holding in one of the cases that the school regulation prohibiting the wearing of such buttons was not reasonable, the Court stated that school officials 'cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.' Burnside v. Byars, supra, at 9. While the decisions of the Court of Appeals for the Fifth Circuit are entitled to respect and should not be brushed aside lightly, they are not binding upon this Court. John Deere Co. v. Graham, 333 F. 2d 529 (8th Cir. 1964). After due consideration, it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech.

"The plaintiffs' request for an injunction and nominal damages are denied. Judgment will be entered accordingly.

"Dated this 1st day of September, 1966."

ARGUMENT

I.

The Regulation of Respondent School District Was, under the Existing Circumstances, Reasonable and Did Not Deprive Petitioners of Their Constitutional Right of Freedom of Speech under the United States Constitution.

As stated by the trial court in this case:

> "Officials of the defendant school district have the responsibility for maintaining a scholarly, disciplined atmosphere within the classroom. These officials not only have a right, they have an obligation to prevent anything which might be disruptive of such an atmosphere. Unless the actions of school officials in this connection are unreasonable, the Courts should not interfere. . . .
>
> "School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech."

In the case of *Blackwell* v. *Issaquena County Board of Education*, 5th Cir. (1966) 363 F. 2d 749, the Circuit Court sustained a school regulation forbidding the wearing of "freedom buttons" as a reasonable rule necessary for the maintenance of school discipline.

> "Cases of this nature, which involve regulations limiting freedom of expression and the communication of an idea which are protected by the First Amendment,

present serious constitutional questions. A valuable constitutional right is involved *and decisions must be made on a case by case basis*, keeping in mind always the fundamental constitutional rights of those being affected. Courts are required to weigh the circumstances and appraise the substantiality of the reasons advanced which are asserted to give rise to the regulations in the first instance. Thornhill v. State of Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L.Ed. 1093 (1940). The constitutional guarantee of freedom of speech 'does not confer an absolute right to speak' and the law recognizes that there can be an abuse of such freedom."

In the instant case, petitioner Christopher Eckhardt and his mother in November of 1965 had gone to Washington, D. C. to participate by carrying banners in the march from the White House to the Washington Monument to protest the Viet Nam War. (A. 35). Mrs. Eckhardt was President of the Des Moines Chapter of the Women's International League for Peace and Freedom. (A. 61). The organization known as Students for Democratic Society had been active in that march and some college students related to Students for Democratic Society and some adults held a meeting at the Eckhardt home Saturday afternoon, December 11, 1965. People who had been to Washington assembled at the Eckhardt home, and one of the proposals that came out of that meeting was to wear black arm bands to support the truce proposed by Senator Kennedy and to mourn the dead in Viet Nam. (A. 52, 53). The arm bands were to be worn from December 16 to January 1. (A. 30).

(None of the petitioners attended this meeting at the Eckhardt home on Saturday afternoon, December 11, 1965.)

The following evening, Sunday, December 12, a second meeting was held at the Eckhardt home of "high school religious youths". (A. 54).

The wearing of the arm bands was a program planned for Students for Democratic Society joined in by the Women's International League for Peace and Freedom. (A. 61).

Reverend Leonard Tinker is a Methodist minister without a church, assigned to serve as "Secretary for Peace and Education". He is paid a salary by the American Friend's Service Committee but has no connection with the Friend's Church. He is familiar with Students for Democratic Society. There were Students for Democratic Society and some adults at the Eckhardt home on Saturday afternoon, December 11, 1965, people who had been to Washington for the march assembled at the Eckhardts.

Reverend Tinker knew his children went to school wearing the black arm bands. He testified he became convinced this was a matter of conscience for the children and considered it an exercise of their constitutional right. (A. 55, 56).

Four Tinker children went to school wearing black arm bands. Petitioner John Tinker, age 15, attended North High, petitioner Mary Beth Tinker, age 13, attended Warren Harding Junior High, Paul, age 8, and Hope, age 11, wore arm bands at their respective schools (Footnote A. 72). Respondents submit that it clearly appears the proposal to wear black arm bands was a propaganda program instituted by Students for Democratic Society and certain adult demonstrators at the meeting at the Eckhardt home, at which meeting none of the petitioners was even in attendance.

When Reverend Tinker has four children, ages 15, 13, 11 and 8 going to their respective schools each with a black arm band, is it more reasonable to conclude they

were doing this as a matter of conscience in the exercise of their constitutional rights, or is Reverend Tinker, the Secretary for Peace and Education, through his children, undertaking to infiltrate the school with his propaganda?

Petitioner John Tinker, age 15, has been in several demonstrations against the war and civil rights demonstrations. (A. 16). His mother and father have participated in most of these demonstrations. (A. 20, 21).

So far as the City of Des Moines is concerned, the meeting where the proposal to wear the black arm bands originated was held on the afternoon of December 11 at the Eckhardt home. Petitioner Christopher Eckhardt did not even attend that meeting. (A. 30). He was out shoveling snow. (A. 35). His mother, who was President of the Des Moines Chapter of the Women's International League for Peace and Freedom, had taken Christopher Eckhardt to Washington, D. C. where they had both participated in a march to protest the Viet Nam War.

Petitioner Christopher Eckhardt and his parents have participated in other marches. (A. 36).

When the vice principal at Roosevelt High School called Mrs. Eckhardt about Christopher wearing the black arm band and refusing to remove it, it was Mrs. Eckhardt who said Christopher had the constitutional right to wear the black arm band if he so desired. (A. 44).

The trial court in this case stated:

> "The Viet Nam War and the involvement of the United States therein has been a subject of major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam War had become vehement in many localities. A protest march against the war had been recently held in Washington, D. C. A wave of draft

card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in support of the rule prohibiting the wearing of arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation."

E. Raymond Peterson, Director of Secondary Education in the Des Moines Schools, testified that the Superintendent of Schools directed him to call a meeting of the principals on Tuesday morning, December 14, 1965. At that meeting, the policy prohibiting the wearing of arm bands was made.

The student was first to be asked to remove the black arm band. If he refused, he was to be sent to the particular building in which he was housed and be asked by the administrative personnel to remove the black arm band. If he still refused, his parents would be contacted if possible and asked if they would like to ask their child to remove the black arm band. If there was still a refusal, the student would be sent home until such time as the black arm band should be removed or the Board of Education should reverse the decision. (A. 45).

Dr. Peterson testified:

"The regulation was not directed at any of the 18,000 students individually, but at the principle of demonstration. . . ."

" 'The schools are no place for demonstrations. We allow for free discussion of these things in the classes. The policy was based on a general school policy against anything that was a disturbing situation within the

school. The school officials believe that the educational program would be disturbed by students wearing arm bands.' are correct statements of the policy as I remember it." (A. 46).

Defendants' Exhibit 3 is a policy promulgated and adopted by the school board at about the time the arm band situation arose. Defendants' Exhibit 4 is a report that Dr. Peterson made to Dr. Davis. It was understood among the principals that anything which interrupts the general educational procedure of the school may be excluded by the principal in the building itself. (A. 47).

Exhibit 3 is set out in full at (A. 67, 68). Exhibit 4 is set out in full at (A. 68, 69, 70).

The reasons set out in Exhibit 4 forbidding wearing arm bands were that a high school student had been killed in Viet Nam and it was felt that any kind of a demonstration might evolve in something difficult to control. The schools hold appropriate assemblies on Veterans' Day and Memorial Day. The principals were following standard procedure for what is considered inappropriate dress, haircuts or other actions that attract attention. Students at one of the high schools were reported to say they would wear arm bands of other colors if the black bands prevailed. The principals felt that since the schools are made up of a captive audience, the other students should not be forced to view the demonstrations of a few. (5 out of 18,000 students wore black arm bands.) Students were sent home until such time as they were willing to return without the arm bands. No student was suspended for a specified length of time. (A. 70).

Ora Niffenegger, President of the school board, testified that the matter of the arm bands first came to his attention on Thursday, December 16, 1965. The following Tuesday was the first board meeting. At that time a de-

cision was delayed to seek legal advice, and in the January meeting by a majority vote, the board upheld the administration in forbidding the wearing of arm bands. (A. 47, 48).

These people (demonstrators) appeared at the regular meeting in January represented by Professor Craig Sawyer of the Drake Law School. Anyone could speak at the regular board meetings. If they gave their names ahead of time, it would be printed in the agenda if there was time for it. The board room was filled to overflowing. There were a few signs present and on several occasions it was a little bit touch-and-go as far as maintaining order. In other words, there was some demonstration from people locally and apparently from outside the city. (A. 49).

A meeting was held Sunday night, December 19, of some 50 persons to discuss fighting the suspension of students for wearing arm bands. This was just ahead of the Tuesday meeting on the 21st where the group appeared before the school board represented by Craig Sawyer who represented the Civil Liberties Union. Reverend Tinker called the meeting on December 19, 1965. (A. 59, 60).

Petitioner John Tinker had not attended any meeting concerning wearing arm bands prior to Wednesday night, December 15. (A. 60). At the meeting in his father's office (December 19, 1965) John attended and there were accounts of physical violence over wearing arm bands. Either Bruce Clark or Ross (Peterson) said somebody had struck him. (A. 62).

In view of this record, it cannot be said that no disturbance resulted from the wearing of the arm bands. Except for the prompt action by the school administration, the problem might well have developed into the type of demonstration that has been witnessed throughout the country in the past two or three years.

Christopher Eckhardt went directly to the principal's office in defiance of and to challenge the rule. The fact that the principal acted immediately and decisively avoided the demonstration at Roosevelt High School. (A. 30, 31).

The school administration adopted the clear and definite rule or regulation, and all but 5 of the 18,000 students involved obeyed it without question.

In *Adderley* v. *State of Florida*, 385 U.S. 39, 87 S. Ct. 242, students from Florida A. & M. University went from school to the jail to demonstrate their protests of arrests of other students protesting the day before. That petition relied upon some of the cases relied upon by the petitioners here. They claimed they had a right to demonstrate on the court house and jail house grounds, stating that the area chosen for peaceful civil rights demonstrations was not only reasonable but also particularly appropriate. The United States Supreme Court in answering this argument, stated at page 247 of 87 S. Ct.:

> "Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioners rely on, Cox v. State of Louisiana, 85 S. Ct., at 464 and 480. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose."

II.

Disturbances in Schools Are Not Properly Measured by Identical Standards Used to Measure Disturbances on the Streets, in Eating Houses or Bus Depots.

In *Brown* v. *Louisiana*, 383 U.S. 131, 86 S. Ct. 719 (1966), this Court by a five to four decision determined

that for five adult Negroes to remain in a library room for five to ten minutes during which they requested a particular book, did not justify their arrest and conviction for breach of the peace. The opinion of Mr. Justice Fortas and the concurring opinions of Mr. Justice Black and Mr. Justice White, each emphasized the brief interval of time of ten to fifteen minutes as a principal if not a conclusive fact in the case.

To support his opinion, Mr. Justice Fortas cited three prior Louisiana cases. *Garner* v. *State of Louisiana,* 658 U.S. 157, 82 S. Ct. 248, 7 L.Ed. 2d 207, which involved sit-ins by Negroes at lunch counters catering only to white. *Taylor* v. *State of Louisiana,* 370 U.S. 154, 82 S. Ct. 1188, 8 L.Ed. 2d 395, concerned a sit-in by Negroes in a waiting room in a bus depot reserved for whites only, and *Cox* v. *State of Louisiana,* 379 U.S. 536, 85 S. Ct. 453, 13 L.Ed. 2d 471, which involved the leader of 2,000 Negroes who demonstrated in the vicinity of the Court House and Jail to protest the arrest of fellow demonstrators.

The *Brown* case emphasizes the importance of considering and analyzing the facts as controlling in each particular case.

In the *Brown* case, Mr. Justice Black wrote a dissenting opinion, joined in by Mr. Justice Clark, Mr. Justice Harlan and Mr. Justice Stewart. At page 732 of 86 S. Ct., Mr. Justice Black stated:

> "Contrary to the implications in the prevailing opinion it is incomprehensible to me that a State must measure disturbances in its libraries and on the streets with identical standards. Furthermore, the vice of discriminatory enforcement, which contaminates the public street phase of this statute does not beset the statute's application to activity in public buildings. *In the public building, unlike the street, peace and quiet is a fast and necessary rule, and as a result*

there is much less room for peace officers to abuse their authority in enforcing the public building part of the statute."

At page 735 of 36 S. Ct., Mr. Justice Black stated:

"Moreover, the conclusion that the statute was unconstitutionally applied because it interfered with the petitioners' so-called protest establishes a completely new constitutional doctrine. In this case this new constitutional principle means that even though these petitioners did not want to use the Louisiana public library for library purposes, they had a constitutional right nevertheless to stay there over the protest of the librarians who had lawful authority to keep the library orderly for the use of people who wanted to use its books, its magazines, and its papers. But the principle espoused also has a far broader meaning. It means that the Constitution (the First and the Fourteenth Amendments) requires the custodians and supervisors of the public libraries in this country to stand helplessly by while protesting groups advocating one cause or another, stage 'sit-ins' or 'stand-ups' to dramatize their particular views on particular issues. And it should be remembered that if one group can take over libraries for one cause, other groups will assert the right to do so for causes which, while wholly legal, may not be so appealing to this Court. The States are thus paralyzed with reference to control of their libraries for library purposes, *and I suppose that inevitably the next step will be to paralyze the schools.* Efforts to this effect have already been made all over the country. . . .

"The First Amendment, I think, protects speech, writings, and expression of views in any manner in which they can be legitimately and validly communicated. But I have never believed that it gives any person or group of persons the constitutional right to go wherever they want, whenever they please, without regard to the rights of private or public property or to state law. Indeed a majority of this Court said

> as much in Cox v. State of Louisiana, 379 U.S. 559, 574, 85 S. Ct. 476, 485, 13 L. Ed. 2d 487. Though the First Amendment guarantees the right of assembly and the right of petition along with the rights of speech, press, and religion, it does not guarantee to any person the right to use someone else's property, even that owned by government and dedicated to other purposes, as a stage to express dissident ideas."

So, in the instant case, whatever rights the Students for Democratic Society or whatever rights Reverend Tinker has as Secretary for Peace and Education, and whatever rights Mrs. Eckhardt has as President of the local chapter of the International League for Peace and Freedom to demonstrate their views, they should not be permitted to infiltrate the schools with such demonstrations and disrupt the scholarly discipline that is necessary to a school room.

III.

The Rule Forbidding the Wearing of Black Arm Bands in the Schools Should Be Upheld Because the Rule Was Reasonably Calculated to Promote Discipline in the Schools.

In the case of *Blackwell* v. *Issaquena County Board of Education*, 5th Cir. (1966), 363 F. 2d 749, the Circuit Court of Appeals sustained a regulation forbidding the wearing of freedom buttons in the schools. At page 754 of 363 F. 2d the Court said:

> "The Constitution does not confer unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom. Whitney v. People of State of California, 274 U.S. 357, 47 S. Ct. 641, 71 L.Ed. 1095 (1927). The interests which the regulation seeks to protect must be fundamental and substantial if there is to be a restriction of speech. In Dennis v. United States, 341 U.S. 494, 71 S. Ct. 857, 95 L.Ed. 1137 (1951), the Supreme Court approved the following statement of the rule by Chief Judge Learned Hand:

"'In each case (courts) must ask whether the gravity of the "evil", discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.'

". . . The school authorities in the instant case had a legitimate and substantial interest in the orderly conduct of the school and a duty to protect such substantial interests in the school's operation."

The Court then distinguishes the case of *Burnside* v. *Byars*, 363 F. 2d 744, decided by the same Court at the same time, as being distinguishable on the facts. At page 754 of 363 F. 2d the Court said:

"As we said in Burnside, 'It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities.'"

Petitioners here relied heavily on *Burnside* v. *Byars*, supra, in their petition for the writ of certiorari to this Court, stating that that case conflicted with the decision of the trial court in the instant case. In *Burnside* v. *Byars* the Court granted a temporary injunction, but stated at page 749 of 363 F. 2d it was granted "without prejudice to the making of a further order and judgment if additional, different or more complete facts are developed upon final hearing which would authorize the entry of such additional judgment."

In view of the decision in *Blackwell* v. *Issaquena County Board of Education*, and the fact that in the Byars case only a temporary injunction was granted, cannot be urged as a strong precedent for the petitioners here.

What the Court undertook to do in *Burnside* v. *Byars* and in *Blackwell* v. *Issaquena County Board of Education* was to decide each case on its own facts, and measured by

that rule, the Court here should sustain respondents' position.

The Court is not to substitute its judgment for the judgment of the directors of the school district, but only to determine whether there has been such an abuse of discretion by the school district as to justify interference by the Court.

In *Pugsley* v. *Sellmeyer*, 158 Ark. 247, 257 S.W. 538, the plaintiff was suspended from school for violating a school rule forbidding the use of face paint or cosmetics. She brought mandamus to require her admission to school notwithstanding her refusal to obey the rule. The Supreme Court of Arkansas affirmed the lower court's decision denying the writ, and the court stated:

> "The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment, unless there is a clear abuse of the discretion or a violation of the law. . . . The question, therefore, is not whether we approve this rule as one we would have made as directors of the district, nor are we required to know whether it was essential to the maintenance of discipline. On the contrary, we must uphold the rule unless we find that the directors have clearly abused their discretion and the rule is not one reasonably calculated to effect the purpose intended of promoting discipline in the schools."

In *Cox* v. *New Hampshire*, 312 U.S. 569, 61 S. Ct. 762 (1941), the United States Supreme Court upheld a New Hampshire conviction of Jehovah's Witnesses convicted for violating a state statute prohibiting a parade without a special license. The Jehovah's Witnesses contended that the statute was an invalid infringement upon their First and Fourteenth Amendment rights of free speech, press,

religion, and assembly. Upholding their conviction, the Supreme Court said:

> "Civil liberties as guaranteed by the Constitution imply the existence of an organized society, maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

In *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 81a S. Ct. 997 (1961), Konigsberg refused to answer questions asked by the Bar Committee of the State of California relative to his qualifications. The Bar Committee refused to certify him on the grounds that his refusal to answer had obstructed a full investigation into his qualifications. The Supreme Court held that it was a valid governmental purpose to require proof of good moral character and that the Bar Association could require him to respond to the questions put to him without violation of the First and Fourteenth Amendments to the United States Constitution. Beginning on page 50 of 366 U.S. and page 1006 of 81a, S. Ct. Rep., Justice Harlan speaking for the Court said:

> "At the outset we reject the view that freedom of speech and association (N.A.A.C.P. v. State of Alabama ex rel. Patterson, 357 U.S. 449, 460, 78 S. Ct. 1163, 1170, 2 L.Ed. 1488) as protected by the First and Fourteenth Amendments, are 'absolutes' not only in the undoubted sense that where the constitutional protection exists it must prevail, but also in the sense that the scope of that protection must be gathered solely from a literal reading of the First Amendment. Throughout its history this Court has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an unlimited license to talk. On the one hand, certain forms of speech, or speech in certain contexts, has been considered outside the scope of constitutional protection (Citing cases . . .). On the other hand, general

> regulatory statutes, not intended to control the content of speech, but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved."

The instant case does not conflict with prior applicable decisions of the United States Supreme Court. The law in Iowa and elsewhere gives school authorities the right to adopt reasonable rules and regulations governing the conduct of the pupils. If the regulation is reasonable in the light of existing facts and circumstances the Court may not question the discretion vested in the school authorities. It is not for the courts to consider whether the rule in retrospect was wise or expedient so long as it was a reasonable exercise of the discretion vested in the school authorities. The *Board of Directors of the Independent School District of Waterloo, Iowa* v. *Ronald Green*, 147 N.W. 2d 854, Iowa, 1967; *Kinzer* v. *Independent School District*, 129 Iowa 441, 105 N.W. 686; *Pugsley* v. *Sellmeyer et al.*, 158 Ark. 247, 257 S.W. 538; *Stromberg* v. *French*, 236 N.W. 477 (N. Dak.); *Burnside* v. *Byars*, 363 F. 2d 744 (5th Cir. 1966); *Blackwell* v. *Issaquena County Board of Education*, 363 F. 2d 749 (5th Cir. 1966).

In the case of *Board of Directors of the Independent School District of Waterloo, Iowa* v. *Ronald Green*, Iowa 1967, 147 N.W. 2d 854, the Iowa Supreme Court sustained a rule of the school district barring married students from participation in extracurricular activities (basketball). At page 857 of 147 N.W. 2d, the Iowa Supreme Court said:

> "Furthermore courts of equity will not ordinarily interfere by injunctive process with the actions of sub-

ordinate political or municipal tribunals, including school boards. And, where matters are by law left to the discretion of such bodies, the exercise of that discretion, in good faith, absent fraud, will not be disturbed. (Citing cases including the instant case of Tinker v. Des Moines Independent Community School District, 258 F. Supp. 971, 972).

"School boards are charged by law with the important and at times difficult task of operating our public schools. In so doing they are permitted to formulate rules for their own government and that of all pupils. With this they have the right to require compliance with any duties imposed by law and the rules. Code sections 274.1, 274.7, and 279.8.... (282.4).

"The courts of this state are not concerned with the wisdom of discretionary acts on the part of school boards in adopting rules and regulations governing the operation, management and conduct of our schools.

"Stated otherwise it is not for us to concern ourselves with the matter of expediency of a given board rule. The duty of all courts, regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management progress and efficient operation of our public school system. It would in effect serve to place operational policies of our schools in the hands of the courts which would be clearly wrong if not unconstitutional.

"The problem here presented is not whether this court, sitting in the position of defendant board, would or would not have adopted the challenged rule. Rather, our task is to determine whether it is so unreasonable and arbitrary as to be illegal, void and unenforceable. In support of the foregoing see 79 C.J.S., Schools and School Districts, Secs. 493-496, pages 442-445, and 47 Am. Jur., Schools, Sections 45-47, pages 326-329."

At page 860 of 147 N.W. 2d, the Iowa Supreme Court said:

> "We conclude the rule adopted by defendant board barring married students from participating in extra-curricular activites is neither arbitrary, unreasonable, irrational, unauthorized, nor unconstitutional. In taking this position we do not stand alone. See Kissick v. Garland Independent School District, supra; Starkey v. Bd. of Ed. of Davis County Sch. Dist., 14 Utah 2d 227, 381 P. 2d 718; State ex rel. Thompson v. Marion County Board of Education, 202 Tenn. 29, 302 S.W. 2d 57; State ex rel. Baker v. Stevenson, Ohio Com. Pl., 189 N.E. 2d 181; and Cochrane v. Mesick Consol. School Dist. Board of Ed., 360 Mich. 390, 102 N.W. 2d 569."

Byrd v. *Gary,* 184 F. Supp. 388, District Court of South Carolina. In that case plaintiffs brought action seeking reinstatement and an injunction against further expulsion of students sent home for attempting to organize boycott by student body of product served in the school cafeteria. Students were warned that the boycott would not be permitted. In the course of the opinion, the Court said:

> "The defendant school officials with no intent to discriminate, took such action as in their discretion the situation required. Such discretionary action is not subject to attack under the Civil Rights Act,, 42 U.S.C.A., Sec. 1981 et seq."

The question which this Court must determine is not whether or not this Court sitting as the school board would have decided the question in the manner the school board did, but whether or not there has been such an abuse of the discretion vested in the school board as to violate the constitutional rights of the petitioners and to justify interference by this Court.

In deciding that question, and in determining the reasonableness of the regulation against wearing black arm

bands, the Court should consider the background and facts known to the school administration and school board at the time of enacting and confirming the regulation.

The senior Tinkers and the senior Eckhardts who bring this action on behalf of their minor children, are professional protesters and demonstrators motivated in this instance by the Students for Democratic Society, the International League for Peace and Freedom and Reverend Tinker is the Secretary for Peace and Education in some way affiliated with the Friend's Church. They and other outsiders similarly minded saw an opportunity to infiltrate the Des Moines schools with their propaganda.

It is not a question of whether or not these people have the right to demonstrate. It is a question of whether they have the right to demonstrate in the schools.

The superintendent of schools and the principals nipped this plan of infiltration in the bud. No one can accurately judge what might have happened if the school administration had not acted so swiftly. There have been enough other similar demonstrations in schools, particularly in the colleges, that the Court can take judicial notice of the fact that the consequences could have been serious if the demonstration had not been stopped almost before it got started.

Christopher Eckhardt went directly to the principal's office to tell him he was wearing a black arm band in defiance of the school regulation and that he refused to remove it. When the vice principal called his mother, she said he had a constitutional right to wear the arm band.

Notwithstanding this prompt action on the part of the school administration, there was physical violence inflicted on one of the suspended students at Roosevelt, Bruce Clark, and perhaps also on Ross Peterson. (A. 62, A. 71).

John Tinker created a disturbance at North High by wearing the arm band. He was warned to take the arm band off. He said he was not in fear of being attacked because there were too many people there. (A. 18).

Mary Beth Tinker was warned that she would get in trouble wearing the arm band. The boys made smart remarks. (A. 26).

In the brief time the arm bands were worn, there was a disturbance in the schools and certainly the school officials could reasonably calculate and expect the situation to deteriorate and become worse if not stopped at its inception.

Dr. Peterson, in charge of secondary education, said that for the good of the school system they did not think demonstrations should be permitted. He stated, "We allow for free discussion of these things in the classes. The policy was based on a general school policy against anything that was a disturbing situation within the school. The school officials believe that the educational program would be disturbed by students wearing arm bands."

The proponents of the arm bands were permitted to appear before the school board, represented by an attorney, and everyone was given an opportunity to speak that desired to do so. As stated by the president of the school board, "Our board room was filled to overflowing. There were a few signs present, and on several occasions it was a little bit touch-and-go as far as maintaining order, but we did get through. In other words, there was some demonstration from people locally and apparently from outside the city."

The case is distinguishable from the freedom of religion cases such as *West Virginia* v. *Barnette*, 319 U.S. 624, 63 S. Ct. 1178; *School District* v. *Schempp*, 374 U.S. 203,

and *Engel* v. *Vitale*, 370 U.S. 421. The wearing of black arm bands had no religious significance whatever. They were seeking to demonstrate in order to influence others to believe as they did relative to the war in Viet Nam. The record reflects that neither the petitioners nor the parents were strangers to this form of persuasion. They, together with their parents, have demonstrated on a number of other occasions. They were seeking to use the public school as a captive audience as a place to promote their own beliefs. Respondents respectfully submit that the First and Fourteenth Amendments to the Constitution do not require school authorities to permit this kind of activity among the student body when, as in this case, there is a reasonable likelihood it will disrupt the educational process.

As stated in *Board of Directors of Independent School District of Waterloo* v. *Green*, 147 N.W. 2d 854 at 858:

> "Stated otherwise it is not for us to concern ourselves with the matter of expediency of a given board rule. The duty of all courts, regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management, progress and efficient operation of our public school system. It would in effect serve to place operational policies of our schools in the hands of the courts which would be clearly wrong if not unconstitutional."

Respondents submit that the school administration and school board in the exercise of their discretion were justified in adopting the rule forbidding the wearing of arm bands, because under the circumstances, a disturbance in school discipline and the orderly processes of education was reasonably to be anticipated if the arm bands were worn.

CONCLUSION

For the reasons stated in the foregoing brief and argument, the judgment of the District Court as affirmed by the Circuit Court of Appeals should be affirmed by this Court as requested by respondents.

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SUPREME COURT OF THE UNITED STATES

No. 21.—October Term, 1968.

John F. Tinker and Mary Beth Tinker, Minors, etc., et al., Petitioners, *v.* Des Moines Independent Community School District et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February 24, 1969.]

Mr. Justice Fortas delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines, Iowa, held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until

after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under § 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the defendant school officials and the defendant members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. 258 F. Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that prohibition of the wearing of symbols like the armbands cannot be sustained unless it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school." *Burnside* v. *Byars*, 363 F. 2d 744, 749 (1966).[1]

On appeal, the Court of Appeals for the Eighth Circuit considered the case *en banc*. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion. 383 F. 2d 988 (1967). We granted certiorari. 390 U. S. 942 (1968).

I.

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is

[1] In *Burnside*, the Fifth Circuit ordered that high school authorities be enjoined from enforcing a regulation forbidding students to wear "freedom buttons." It is instructive that in *Blackwell* v. *Issaquena County Board of Education*, 363 F. 2d 749 (1966), the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in another high school where the students wearing freedom buttons harassed students who did not wear them and created much disturbance.

the type of symbolic act that is within the Free Speech Clause of the First Amendment. See *West Virginia* v. *Barnette*, 319 U. S. 624 (1943); *Stromberg* v. *California*, 283 U. S. 359 (1931). Cf. *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Brown* v. *Louisiana*, 383 U. S. 131 (1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. Compare *Cox* v. *Louisiana*, 379 U. S. 536, 555 (1965); *Adderley* v. *Florida*, 385 U. S. 39 (1966).

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. In *Meyer* v. *Nebraska*, 262 U. S. 390 (1923), and *Bartels* v. *Iowa*, 262 U. S. 404 (1923), this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent.[2] See also *Pierce* v. *Society of Sisters*, 268

[2] *Hamilton* v. *Regents of Univ. of Cal.*, 293 U. S. 245 (1934) is sometimes cited for the broad proposition that the State may attach conditions to attendance at a state university that require individuals to violate their religious convictions. The case involved dismissal of members of a religious denomination from a land grant college for refusal to participate in military training. Narrowly viewed, the case turns upon the Court's conclusion that merely requiring a student to participate in school training in military

U. S. 510 (1925); *West Virginia* v. *Barnette*, 319 U. S. 624 (1943); *McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *Wieman* v. *Updegraff*, 344 U. S. 183, 195 (1952) (concurring opinion); *Sweezy* v. *New Hampshire*, 354 U. S. 234 (1957); *Shelton* v. *Tucker*, 364 U. S. 479, 487 (1960); *Engel* v. *Vitale*, 370 U. S. 421 (1962); *Keyishian* v. *Board of Regents*, 385 U. S. 589, 603 (1967); *Epperson* v. *Arkansas*, 393 U. S. 97 (1968).

In *West Virginia* v. *Barnette*, *supra*, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." 319 U. S., at 637.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority

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"science" could not conflict with his constitutionally protected freedom of conscience. The decision cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guaranties. See, *e. g.*, *West Virginia* v. *Barnette*, 319 U. S. 624 (1943); *Dixon* v. *Alabama State Bd. of Educ.*, 294 F. 2d 150 (C. A. 5th Cir. 1961); *Knight* v. *State Bd. of Educ.*, 200 F. Supp. 174 (D. C. M. D. Tenn. 1961); *Dickey* v. *Alabama St. Bd. of Educ.*, 273 F. Supp. 613 (C. A. M. D. Ala. 1967). See also Note, 73 Harv. L. Rev. 1595 (1960); Note, 81 Harv. L. Rev. 1045 (1968).

of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See *Epperson* v. *Arkansas, supra*, at 104; *Meyer* v. *Nebraska, supra*, at 402. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II.

The problem presented by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style or deportment. Compare *Ferrell* v. *Dallas Independent School District*, 392 F. 2d 697 (1968); *Pugsley* v. *Sellmeyer*, 158 Ark. 247, 250 S. W. 538 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive, expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the school or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the

armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk, *Terminiello* v. *Chicago*, 337 U. S. 1. (1959); and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that the exercise of the forbidden right would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. *Burnside* v. *Byars*, *supra*, at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.[3]

[3] The only suggestions of fear of disorder in the report are these: "A former student of one of our high schools was killed in Viet

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam.[4] It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.)[5]

Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.

"Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed."

Moreover, the testimony of school authorities at trial indicates that it was not fear of disruption that motivated the regulation prohibiting the armbands; the regulation was directed against "the principle of the demonstration" itself. School authorities simply felt that "the schools are no place for demonstrations," and if the students "didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools."

[4] The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that "[t]he Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the armband regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D. C. A wave of draft-card-burning incidents protesting the war had swept the country. At that time two publicized draft burning were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views." 258 F. Supp., at 972–973.

[5] After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed to publication of his article. They

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit said, school officials cannot suppress "expressions of feelings with which they do not wish to contend." *Burnside* v. *Byars, supra,* at 749.

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reported that "we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one."

In *Meyer* v. *Nebraska, supra,* at 402, Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." He said:

> "In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution."

This principle has been repeated by this Court on numerous occasions during the intervening years. In *Keyishian* v. *Board of Regents,* 385 U. S. 589, 603, MR. JUSTICE BRENNAN, speaking for the Court, said:

> "'The vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools.' *Shelton* v. *Tucker,* 234 U. S. 479, 487. The classroom is peculiarly the 'market-place of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.' . . ."

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities.

Among those activities is personal intercommunication among the students.[6] This is not only an inevitable part of the process of attending school. It is also an important part of the educational process. A student's rights therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so "without materially and substantially interfering with appropriate discipline in the operation of the school" and without colliding with the rights of others. *Burnside* v. *Byars, supra,* at 749. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guaranty of freedom of speech. Cf. *Blackwell* v. *Issaquena City Bd. of Educ.,* 363 F. 2d 749 (C. A. 5th Cir., 1966).

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free

[6] In *Hammond* v. *South Carolina State College,* 272 F. Supp. 947 (D. C. D. S. C. 1967), District Judge Hemphill had before him a case involving a meeting on campus of 300 students to express their views on school practices. He pointed out that a school is not like a hospital or a jail enclosure. Cf. *Cox* v. *Louisiana,* 379 U. S. 536 (1965); *Adderley* v. *Florida,* 385 U. S. 39 (1966). It is a public place, and its dedication to specific uses does not imply that the constitutional rights of persons entitled to be there are to be gauged as if the premises were purely private property. Cf. *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Brown* v. *Louisiana,* 383 U. S. 131 (1966).

speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. Cf. *Hammond* v. *South Carolina State College*, 272 F. Supp. 947 (D. C. D. S. C. 1967) (orderly protest meeting on state college campus); *Dickey* v. *Alabama State Board*, 273 F. Supp. 613 (D. C. M. D. Ala. 1967) (expulsion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guaranties.

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and by their example, to influence others to adopt them. They neither interrupted

school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 21.—October Term, 1968.

John F. Tinker and Mary Beth Tinker, Minors, etc., et al., Petitioners, *v.* Des Moines Independent Community School District et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February 24, 1969.]

Mr. Justice Stewart, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults. Indeed, I had thought the Court decided otherwise just last Term in *Ginsberg* v. *New York*, 390 U. S. 629. I continue to hold the view I expressed in that case: "[A] State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees." *Id.*, at 649–650 (concurring opinion). Cf. *Prince* v. *Massachusetts*, 321 U. S. 158.

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[February 24, 1969.]

Mr. Justice White, concurring.

While I join the Court's opinion, I deem it appropriate to note, first, that the Court continues to recognize a distinction between communicating by words and communicating by acts or conduct which sufficiently impinge on some valid state interest; and, second, that I do not subscribe to everything the Court of Appeals said about free speech in its opinion in *Burnside* v. *Byars*, 363 F. 2d 744, 748 (C. A. 5th Cir. 1966), a case relied upon by the Court in the matter now before us.

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[February 24, 1969.]

Mr. Justice Black, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme Court.[1] The Court brought this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of schools pupils to express their political views all the way "from kindergarten through high school." Here the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States' soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused

[1] The petition for certiorari here presented this single question: "Whether the First and Fourteenth Amendments permit officials of state-supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum."

to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker was 11 years old in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Chris Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two Courts below. First the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to pure speech" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions are not "unreasonably" disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable."

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment compare, *e. g.*, *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490 (1949), the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech—"symbolic" or "pure"—and whether the Courts will allocate to themselves the function of deciding how

the pupils school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In *Cox v. Louisiana*, 379 U. S. 536 (1964), for example, the Court clearly stated that the rights of free speech and assembly "do not mean that anyone with opinions or beliefs to express may address a group at any public place and at any time." 379 U. S. 536, 554 (1964).

While the record does not show that any of these armband students shouted, used profane language or were violent in any manner, a detailed report by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, non-protesting students had better let them alone. There is also evidence that the professor of mathematics had his lesson period practically "wrecked" chiefly by disputes with Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw it would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils

of state-supported schools, kindergarten, grammar school or high school, can defy and flaunt orders of school officials to keep their minds on their own school work, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the Boards of Education.[2]

The United States District Court refused to hold that the State school orders violated the First and Fourteenth Amendments. 258 F. Supp. 971. Holding that the protest was akin to speech, which is protected by the First and Fourteenth Amendments, that court held that the school orders were "reasonable" and hence constitutional. There was at one time a line of cases holding "reasonableness" as the court saw it to be the test of a "due process" violation. Two cases upon which the the Court today heavily relies for striking down these school orders used this test of reasonableness, *Meyers* v. *Nebraska*, 262 U. S. 390 (1923) and *Bartells* v. *Iowa*, 262 U. S. 404 (1923). The opinions in both cases were written by Mr. Justice McReynolds; Mr. Justice Holmes, who opposed this reasonableness test, dissented from the holdings as did Mr. Justice Sutherland. This constitutional test of reasonableness prevailed in this Court for a season.

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[2] The following Associated Press article appeared in the Washington *Evening Star*, January 11, 1969, p. A-2, col. 1.

"BELLINGHAM, Mass. (AP)—Todd R. Hennessy, 16, has filed nominating papers to run for town park commissioner in the March election.

"'I can see nothing illegal in the youth's seeking the elective office,' said Lee Ambler, the town counsel. 'But I can't overlook the possibility that if he is elected any legal contract entered into by the park commissioner would be void because he is a juvenile.'

"Todd is a junior in Mount St. Charles Academy, where he has a top scholastic record."

It was this test that brought on President Franklin Roosevelt's well-known Court fight. His proposed legislation did not pass, but the fight left the "reasonable" constitutional test dead on the battlefield, so much so that this Court in *Ferguson* v. *Skrupa*, 372 U. S. 726, 729, 730, after a thorough review of the old cases, was able to conclude in 1962:

> "There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some economic or social philosophy . . . . The doctrine that prevailed in *Lochner*, *Coppage*, *Adkins*, *Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."

The *Ferguson* case totally repudiated the old reasonableness due process test, the doctrine that judges have the power to hold laws unconstitutional upon the belief of judges that they are "unreasonable," "arbitrary," "shock the conscience," "irrational," "contrary to fundamental 'decency,'" or some other such flexible term without precise boundaries. I have many times expressed my opposition to that concept on the ground that it gives judges power to strike down any law they do not like. If the majority of the Court today, by agreeing to the opinion of my Brother FORTAS, is resurrecting that old reasonableness due process test, I think the constitutional change should be plainly, unequivocally, and forthrightly stated for the benefit of the bench and bar. It will be a sad day for the country, I believe, when the present day Court returns to the McReynolds' due process concept. Other cases cited by the Court do not, as implied, follow the McReynolds' reasonableness doctrine. *West Virginia* v. *Barnette*, 319 U. S. 625, clearly rejecting the "reason-

ableness" test, held that the Fourteenth Amendment made the First applicable to the States, and held that the two forbade a State to *compel* little school children to salute the United States flag when they had religious scruples against it.[3] Neither *Thornhill* v. *Alabama*, 310 U. S. 88; *Stromberg* v. *California*, 283 U. S. 359; *Edwards* v. *South Carolina*, 372 U. S. 329, nor *Brown* v. *Louisiana*, 382 U. S. 131, related to school children at all, and none of these cases embraced Mr. Justice McReynolds' reasonableness test; and *Thornhill*, *Edwards*, and *Brown* relied on the vagueness of state statutes under scrutiny to hold it unconstitutional. *Cox* v. *Louisiana*, 379 U. S. 536, 555, and *Adderley* v. *Florida*, 385 U. S. 39, cited by the Court as a "compare," indicating, I suppose, that these two cases are no longer the law, were not rested to the slightest extent on the *Meyers* and *Bartell* "reasonableness-due process-McReynolds' " constitutional test.

I deny, therefore, that it has been the "unmistakable holding of this Court for almost 50 years" that "students" and "teachers" take with them into the "schoolhouse gate" constitutional rights to "freedom of speech or

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[3] In *Cantwell* v. *Connecticut*, 310 U. S. 296, 303–304 (1939), this Court said:

"The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

expression." Even *Meyer* did not hold that. It makes no reference to "symbolic speech" at all; what it did was to strike down as "unreasonable" and therefore unconstitutional a Nebraska law barring the teaching of the German language before the children reached their eighth grade. One can well agree with Justice Holmes and Mr. Justice Sutherland, as I do, that such a law was no more unreasonable than it would be to bar the teaching of Latin and Greek to pupils who have not reached the eighth grade. In fact, I think the majority's reason for invalidating the Nebraska law was that they did not like or in legal jargon that it "shocked the Court's conscience," "offended its sense of justice" was "contrary to fundamental concepts of the English-speaking world," as the Court has sometimes said. See, *e. g., Rochin* v. *California,* 342 U. S. 165, and *Irvine* v. *California,* 347 U. S. 128. The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semitic carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or to the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite. See, *e. g., Cox* v. *Louisiana,* 379 U. S. 536, 555; *Adderley* v. *Florida,* 385 U. S. 39.

In my view, teachers in state-controlled public schools are hired to teach there. Although Mr. Justice McReynolds may have intimated to the contrary in *Meyers* v. *Nebraska, supra,* certainly a teacher is not paid to go into

school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

The true principles on this whole subject were in my judgment spoken by Mr. Justice McKenna for the Court in *Waugh* v. *Mississippi University* in 237 U. S. 589, 596–597. The State had there passed a law barring students from peaceably assembling in Greek letter fraternities and providing that students who joined them could be expelled from school. This law would appear on the surface to run afoul of the First Amendment's freedom of assembly clause. The law was attacked as violative of due process and as a deprivation of property, of liberty, and of the privileges and immunities clause of the Fourteenth Amendment. It was argued that the fraternity made its members more moral, taught discipline, and inspired its members to study harder and to obey better the rules of discipline and order. This Court rejected all the "fervid" pleas of the fraternities' advocates decided unanimously against these Fourteenth Amendment arguments. The Court in its closing paragraph made this statement which has complete relevance for us today:

> "It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such mem-

> bership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that *membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions.* It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity." (Emphasis supplied.)

It was on the foregoing argument that this Court sustained the power of Mississippi to curtail the First Amendment's right of peaceable assembly. And the same reasons are equally applicable to curtailing in the States' public schools the right to complete freedom of expression. Iowa's public schools, like Mississippi's university, are operated to give students an opportunity to learn, not to talk politics by actual speech, or by "symbolic" speech. And as I have pointed out before, the record amply shows that public protest in the school classes against the Vietnam war "distracted from that singleness of purpose which the State (here Iowa) desired to exist in its public educational institutions." Here the Court should accord Iowa educational institutions the same right to determine for itself what free expression and no more should be allowed in its schools that it accorded Mississippi with reference to freedom of assembly. But even if the record were silent as to protests against the Vietnam war distracting students from their assigned class work, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam war have disrupted and divided this country as few other issues

ever have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrolable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today that some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but

frightened students who wanted an education that the picketers did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with law suits for damages and injunctions against their teachers like they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems[4] in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part, to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

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[4] Statistical Abstract of the United States (1968), Table No. 578, p. 406.

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[February 24, 1969.]

Mr. Justice Harlan, dissenting.

I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

Finding nothing in this record which impugns the good faith of respondents in promulgating the arm band regulation, I would affirm the judgment below.